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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.922 OF 2017

New Purshottam Nagar Co-op. Hsg. Society	... Petitioner
Vs.	
Municipal Commissioner and Ors.	... Respondents

Ms. Rajani Iyer, Senior Counsel a/w Mr. Niranjan Waghela i/b. M/s. Pandya & Co. for the Petitioner.
Ms. K.H. Mastakar for the Respondent – BMC.
Mr. S.B. Gore, AGP for the Respondent – State.
Mr. P.K. Dhakephalkar, Senior Counsel a/w Mr. Rishav Jain i/b. IC Legal for the Respondent No.7.
Mr. Ravi Kadam, Senior Counsel and Dr. Birendra Saraf a/w Mr. Laxman Jain i/b. Mr. Yogesh Adhiya for the Respondent No.8.

**CORAM : A.S. OKA &
RIYAZ I. CHAGLA, JJ.**

DATE : 9th JULY 2018

P.C.

1 Heard the learned senior counsel appearing for the petitioner. Prayer (b) seeks a writ of mandamus directing the Municipal Corporation to demolish construction work carried out pursuant to sanctioned plans dated 3rd August 2012. Prayer (c) which is the last substantive relief sought in the petition is for directing the Municipal Corporation not to approve any amendment to the plan sanctioned on 3rd August 2012. Our attention is invited to a copy of plaint in Suit No.2894 of 2011 filed in this Court and in particular prayer clause (k)1

which reads thus :-

“(k)1 That this Hon'ble Court declare that the Plans Sanctioned and Approved by Defendant No.4 u/no.CE/1782/WS/AH dated 03.08.2012 and its corresponding Intimations of Disapproval (I.O.D.), Commencement Certificates and all related plans, sanctions, permissions and approvals thereon, granted by Defendant No.4 in favour of the Defendant Nos.1 to 3 and/ or others, in respect of the property, described at Exhibit 'B' hereto, stand Cancelled;”

2 The submission of the learned senior counsel appearing for the petitioner is that the petitioner has an independent cause of action available against the Municipal Corporation for challenging the permission granted on 3rd August 2012. However, we find that the Municipal Corporation is a party Defendant No.4 to the suit in which there is a substantive prayer for cancellation of the same permission dated 3rd August 2012 which is the subject matter of challenge in this petition under Article 226 of the Constitution of India. In view of pendency of the suit in this Court, we decline to entertain this petition under Article 226 of the Constitution of India and the petition is disposed of.

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signed by
Pallavi
Mahendra
Wargaonkar
Date:
2018.07.17
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(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)