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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10412 OF 2018

Shahaji Shankar Deshmukh ...Petitioner

V/s.

The Block Development Officer

(Class-1) and Ors.

....Respondents

Mr. Vivek Salunkhe a/w. Mr. Aniket Deshmukh,
Advocate for the petitioner.

Mr. Pankaj P. Deokar, Advocate for respondent no.3.

**CORAM : B.P. DHARMADHIKARI, &
SANDEEP K. SHINDE, JJ.**

Wednesday, 18th September, 2019.

P.C. :

1. Petitioner, a neighbour points out, respondent no.3 has raised construction on adjacent plot without proper sanctioned plan and without leaving any place/space open to sky.

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2. Though, respondents no.1 and 2 are served, they have chosen not to appear. Respondent no.3 has appeared and filed reply affidavit.

3. This Court has on 10th October, 2018 restrained respondent no.3 from proceeding further with construction. With the result, the construction which has reached the stage of first slab has come to standstill.

4. Respondent no.3 has pointed out the area of his plot to be 577.5 sq.mts. However, he has not pointed out the area of construction already raised and total construction to be raised. He has not placed on record any map pointing out the marginal spaces to be kept open to sky.

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5. Petitioner, as also, respondent no.3 is not in a position to point out the Development Control Rule or Building Bye-laws which govern the subject plans. Learned Counsel for respondent no.3 submits that construction of petitioner is also unauthorised and without proper sanction.

6. Petitioner has not produced before us any sanction plan showing layout or then sanctioned plan of his own structure. He has not placed before us a photograph pointing out the structure being erected by respondent no.3.

7. We therefore find several disputed questions arising for consideration. These questions cannot be gone into in present jurisdiction. Not only this, respondents no.1 and 2

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have chosen not to appear though they are served.

8. In this situation, we grant petitioner liberty to move Civil Court for grant of appropriate declaration and injunction. If such suit is filed within a period of three months from today, interim order granted by this Court shall continue till the trial Court passes fresh order afresh on prayer for temporary injunction therein. The trial Court shall, without getting influenced by our observations, decide the matter in accordance with law.

9. With these observations, we dispose off the petition.