

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6324 OF 2014

Mr. Javed A.W. Sayyed

... Petitioner

Versus

The State of Maharashtra and others

... Respondents

Mr. Ramesh Shinde for the Petitioner.

Ms. Molina Thakur, AGP for the Respondent-State.

Mr. Sandesh D. Patil alongwith Ms. A. Amin and Ms. Divya Pawar for Respondent No.3.

Mr. N.R. Bubna for Respondent No.5.

CORAM : S.J. KATHAWALLA AND
B.P. COLABAWALLA, JJ.

DATED : NOVEMBER 21, 2019.

P.C. :-

1. The above Writ Petition is filed by the Petitioner for the following reliefs :-

“(a) That this Hon’ble High Court be pleased to issue a Writ of Mandamus or any other appropriate Writ Direction/Order and to take immediate action regarding illegal and unauthorized construction carried out by the Respondent Nos.2, 3 and 4 of building known as Poonam Enclave (presently known as Om Poonam Enclave Co-operative Housing Society Limited) containing 55 structures (flats and shops) lying and being situated at Old Survey No.357/1 and New Survey No.84/1 at Godev Village, Taluka and District – Thane, under the jurisdiction Mira – Bhayander Municipal Corporation at Bhayander, District Thane and be pleased to direct the Respondent No.5 to regularised the above said building on the cost of the Respondent Nos.2, 3 and 4 and officers of

Respondent No.5 those support them during the course of the said illegal and unauthorised constructions.

(b) That this Hon'ble High Court be pleased to issue a Writ of Mandamus or any other appropriate Writ Direction / Order to identify all the illegal constructions carried out in and around the Old Survey No.357/1 and New Survey No.94/1 at Godev Village, Taluka and District – Thane, under the jurisdiction Mira – Bhayander Municipal Corporation at Bhayander, District Thane and be pleased to direct the Respondent No.5 to regularised the said illegal and unauthorized constructions on the cost of the respective builders.

(c) That this Hon'ble High Court be pleased to issue a Writ of Mandamus or any other appropriate Writ Direction / Order to Respondent No.1 to take any action demolition against the officials of Respondent No.5 and Respondents No.2, 3 and 4 who were illegally and unauthorized constructed of building known Poonam Enclave (presently known as Om Poonam Enclave Co-operative Housing Society Limited) containing 55 structures (flats and shops) lying and being situated at Old Survey No.357/1 and New Survey No.84/1 at Godev Village, Taluka and District – Thane, under the jurisdiction Mira – Bhayander Municipal Corporation at Bhayander, District Thane and further punished Respondents under criminal laws and be removed from the service and further damage done by their acts and omissions assessed and recovered from them and also awarded compensation to the Petitioner from Respondents for his mental harassment.”

2. It is submitted on behalf of the Petitioner that he has purchased Flat No.401 on the Fourth Floor of Om Poonam Enclave Co-operative Housing Society Limited, Mira Bhayander Road, Mira Road (East), District Thane, from Respondent Nos.2, 3 and 4 i.e. developers/builders. The Learned Advocate appearing for the Petitioner submits

that the entire construction carried out by the Respondent Nos.2, 3 and 4 is illegal and unauthorized and therefore, Respondent Nos.2, 3 and 4 should apply for regularization of the same and Respondent No.5 should regularize the same at the cost of Respondent Nos.2, 3 and 4.

3. Apart from the fact that in the absence of any regularization application, the Municipal Corporation cannot be directed to regularize any unauthorized construction, it is pointed out by the Respondent No.4 who is the developer that he has filed a suit as far back as in the year 2005 being Regular Civil Suit No.414 of 2005 before the Civil Judge, Junior Division, Thane, impugning the order of demolition on the ground that the construction is carried out as per the sanctioned plan/s and that an order restraining the Corporation from demolishing the said structure/building is passed on 30th July, 2005. It is also submitted that the trial in the said suit has already commenced and the same will soon be concluded.

4. The Learned Advocate appearing for the Corporation correctly submits that the Corporation will have to wait till the suit is decided and thereafter, take action only if the order of the Court is adverse to Respondent No.4. The statement is accepted.

5. In view of the above, the above Writ Petition is dismissed.

(B.P. COLABAWALLA, J.)

(S.J. KATHAWALLA, J.)