

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5076 OF 2017

Shri Mahant Tejnarayandas Shishya of
Mahant Shyamaldas ... Petitioner

Versus

State of Maharashtra and Ors. ... Respondents

Mr. Vijay Killedar for the petitioner.

Mr. S.D. Rayrikar, AGP for respondent no. 1.

Mr. Balkrishna Joshi for respondent no. 2.

Mr. Girish Paryani for respondent no. 3.

CORAM : B.P. DHARMADHIKARI &
SANDEEP K. SHINDE, JJ.
DATE : SEPTEMBER 27, 2019

P.C.:

Heard respective counsel.

2. It is not in dispute that in the year 2016 the present petitioner has already filed a civil suit for eviction of respondent no. 3 as encroacher on his property. Temporary injunction application moved in that civil suit came to be rejected and that order has attained finality. It appears that in the meanwhile, respondent no. 3 has raised a new structure on the suit property involved in that suit. Petitioner thereafter started making efforts

to see that this new structure is demolished. He has approached the Municipal Council. According to him, the Municipal Council assured him to take action as the new structure is without proper building permission.

3. When the civil suit for eviction of alleged encroacher is already pending, we are not inclined to examine this grievance in extra ordinary jurisdiction. Respondent no. 3 claims to be in possession since last more than 40 years.

4. The disputed issues regarding possession or title can be examined by the civil court. If the petitioner is found to be the owner or in possession, the civil court can also pass suitable orders about the structure which has come up or which may come on the suit property. Hence, we are inclined to expedite that suit.

5. Regular Civil Suit No.323 of 2016 pending before the Civil Judge, Junior Division, Ulhasnagar is expedited. We direct the petitioner as also respondent no.3 and other parties to appear before that court on 18/11/2019. That court shall thereafter attempt to decide the said suit finally within next six months.

6. With these directions and keeping all rival contentions open, we dispose of the writ petition.

(SANDEEP K. SHINDE, J.)

(B.P. DHARMADHIKARI, J.)