

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1915 OF 2019

Manohar Tukaram Shendkar

...Petitioner

Versus

Ravikant Ramdas Kapure

And others

...Respondents

WITH
Writ Petition NO. 1916 OF 2019
WITH
Writ Petition NO. 1917 OF 2019
WITH
Writ Petition NO. 1918 OF 2019
WITH
Writ Petition (ST) NO. 4648 OF 2019
WITH
Writ Petition (ST) NO. 4649 OF 2019
WITH
Writ Petition (ST) NO. 4650 OF 2019
WITH
Writ Petition (ST) NO. 4651 OF 2019

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Mr. S.G. Deshmukh i/b. G.T.Kanchanpurkar, Advocate for the Petitioners.

Mr. Anant N. Namjoshi, Advocate for Respondents No.1 & 2.

Mr. A.S. Rao a/w. Prashant Kamble, Advocate for Respondents No.3 & 4.

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CORAM : R. G. KETKAR, J.

DATE : 14th FEBRUARY, 2019

P.C.

1. Heard Mr.S.G. Deshmukh, learned counsel for the petitioners, Mr. Anant Namjoshi, learned counsel for respondents No.1 & 2 and Mr.A.S. Rao, learned counsel for respondents No.3 & 4, at length.
2. These petitions are directed against the judgment and orders dated 19.8.2017 passed by the learned 4th Jt. Civil Judge, Senior Division,

Kalyan below Exhibit-5 in the suits filed by the petitioners as also the orders dated 30.1.2019 passed by the learned Ad-hoc District Judge-1, Kalyan in Misc. Civil Appeals. By these orders, the Courts below rejected the applications made by the petitioners/plaintiffs under Order XXXIX Rules 1 & 2 of Code of Civil Procedure, 1908 (for short, 'C.P.C.') for injunction restraining the respondents/defendants from demolishing the building situate in Kapure Building, Survey No.270, Hissa No.9A, City Survey No.386-B & 387-B, Vishnu Nagar, Nana Shankarshet Road, Dombivali (West).

3. The petitions were heard on 12.2.2019, 13.2.2019 and today. Mr.Deshmukh states that the petitioners, namely, (1) Manohar Shendkar (petitioner in W.P. No.1915/2019), (2) Kailash Bandu Sawakhande (C.A. of petitioner in W.P. No.1916/2019), (3) Gopal Devappa Shetty (petitioner in WP.No.1917/2019), (4) Prashant Jaysingrao Chavan (petitioner in W.P. No.1918/2019), (5) Sureshkumar Nichani (petitioner in W.P. (St.) No.4648/2019), (6) Kailash Tukaram Shendkar (petitioner in W.P. (St.) No.4649/2019, (7) Niraj Devidas Mahindrakar (petitioner in W.P. (St.) No.4650/2019) and (8) Smt. Rajashree Vasant Joshi (petitioner in W.P. (St.) No.4651/2019 are present in the Court. He has tendered photo-copies of their PAN cards, which are taken on record and marked 'A collectively' for identification. Mr. Namjoshi states that respondent No.1 Ravikant Ramdas Kapure is also present in the Court today.

4. Mr. Deshmukh, on instructions from the petitioners, states that the petitioners are not pressing these petitions. He seeks permission to withdraw these petitions. He submits that after respondents No.3 & 4 demolishes the building, the petitioners will submit proposal for erecting temporary structures on Survey No.270, Hissa No.9A, City Survey No.386-B & 387-B, Vishnu Nagar, Nana Shankarshet Road, Dombivali (West) to the Corporation. Copy thereof shall also be sent for information to respondents No.1 & 2. The petitioners undertake that :

- (i) subject to permission of the Corporation, they will erect temporary structures of equivalent area in their respective possession on the open land at their expenses and will not claim any equity;
- (ii) they will also go on paying monthly rent to respondents No.1 & 2; and
- (iii) as and when respondents No.1 & 2 start reconstruction, they will remove the temporary structures at their expenses.

Undertakings of the petitioners are accepted.

5. In view thereof, on the motion made by Mr. Deshmukh, the petitions are allowed to be withdrawn with liberty as prayed for and are disposed of as such. In case, the petitioners submit the proposal for erecting temporary structures after demolition of the building, the Corporation shall

consider said proposal in accordance with law and will not reject the same only on the ground that respondents No.1 & 2 have objected the same.

6. After obtaining sanction of the building plans, respondents No.1 & 2 will give 15 days' notice to the petitioners for dismantling their temporary structures. Upon receipt of the notices, the petitioners shall dismantle the temporary structures within two weeks therefrom, failing which respondents No.1 & 2 will be at liberty to demolish the structures and recover expenses from the petitioners.

7. Liberty is reserved to respondents No.1 & 2 to move this Court in case the petitioners herein carry out permanent construction in the subject plot. Liberty is also reserved to the petitioners to apply for restoration of water and electricity supply as also installation of water meters and electricity meters. Order accordingly.

(R. G. KETKAR, J.)

Deshmane (PS)