

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4753 OF 2016

Kumar Galaxy Co.Op. Hsg. Soc. Ltd. ...Petitioner
vs.
Pune Municipal Corporation and Ors. ...Respondents

Mr. Girish Godbole a/w. Mr. R.S. Kulkanri, for the Petitioner
Mr. A.P. Kulkarni, for Respondent Nos. 1 to 3.

CORAM : M. S. SONAK, J.

DATE : APRIL 30, 2019

P.C.:

. Heard Mr. Godbole, learned counsel for the Petitioner and
Mr. Kulkarni, for the Respondents.

2. The challenge in this Petition is to the order dated 4th August, 2014 and 12th February, 2015 by which the learned trial Judge and the Appeal Judge have rejected the interim relief to the Petitioner in order to protect the construction of a compound wall which bifurcate the two buildings.

3. Mr. Godbole, learned counsel for the Petitioner concedes that the compound wall was constructed without any permission from the Municipal authorities. He submits that despite this fact, the impugned order warrants interference for at least three reasons. He

submits that the construction of such wall does not breach the F.S.I. regulations and therefore the same can be regularized/ permitted to be retained. He submits that the wall is in existence since 1997 and the same causes no prejudice to any person. Finally, he points out that there was M.O.U. entered into between the inhabitants of the two buildings permitting the construction of such compound wall. Such M.O.U. rejected by both the Courts for the reason that M.O.U. was not stamped. For all these reasons, he submits that the impugned order warrants interference.

4. Mr. Kulkarni, learned counsel for the Respondents point out that it will be difficult for the fire tenders to access both the buildings in case of any mishap and therefore there is a need to demolish the compound wall which is otherwise wholly unauthorized. He submits that such construction can not be regularized particularly when the issue of fire safety is involved. He submits that even otherwise such compound wall is dilapidated and will poze damages if retained. He produces some photographs in relation to the compound wall. For all these reasons, he submits that this Petition warrants dismissal.

5. Upon due consideration and the rival contentions and upon perusal of the record, I am satisfied that no case is made out to interfere with the concurrent findings of both the Courts. This is particularly by taking into consideration the restrictive parameters of interference as laid down by the Hon'ble Supreme Court in the case of ***Wander Ltd. and Another V. Antox India P. Ltd. 1990 (Supp) Supreme Court Cases 727.***

6. In this case, two Courts neither erred on principle nor this is a case where discretion has been exercised unreasonably. Admittedly, the compound wall was put up without the permission from the local authorities. The construction therefore is wholly unauthorized and illegal construction. Such construction can never be permitted to be regularized on the basis of some internal M.O.U. between the parties.

7. There is no merit in the contention that such construction can be permitted to be retained because no question of increase of F.S.I. Since this is a matter relating to fire safety, there is no question of regularization of such construction. If such structure is retained or regularized, the same may pose danger to the

inhabitants and this cannot be permitted to continue on the basis of M.O.U. between the parties. The fact that the wall is in existence since 1997 is also entirely irrelevant in the facts and circumstances of the present case.

8. Mr. Godbole further clarifies that M.O.U. produced only before the Appeal Court. He submits that the Petitioners are willing to demolish the portion of the compound wall and thereafter affix a gate so that there can be no difficulty for the fire tenders to navigate, if any unfortunate situation arises. In such circumstances, there is no question of retaining the structure which is wholly illegal and unauthorized. Further permitting the Petitioner to affix a gate will again raise several other issues relating to the fire safety. Since the construction is unauthorized, there is no question of protecting such structure. The two Courts have correctly appreciated the situation and rejected the prayer for interim relief.

9. For all the aforesaid reasons, this Petition is liable to be dismissed and is hereby dismissed.

10. The interim order granted earlier is hereby vacated.

11. At this stage, Mr. Godbole, learned counsel for the Petitioner seeks for continuation of the status-quo order. This matter was in fact mentioned by the learned counsel for the Pune Municipal Corporation pointing out that a dangerous situation will arise if the wall is retained. Taking into consideration this issue and in the public interest, it will not be appropriate to continue with the status-quo order. Accordingly, request for status-quo is not acceded.

(M. S. SONAK, J.)