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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST) NO.8084 OF 2019

Sayyed Abdul Haque Abdul Jabber ..Petitioner.

V/s.

Bhiwandi Nizampura Municipal Corporation ..Respondent.

Mr.A.A.Siddique with Adeeba Khan for the petitioner.

Mr.Gautam Jain I/b. Manoj Bhatt for the respondent.

CORAM : M.S.SONAK, J.

DATE : MARCH 22, 2019

ORAL JUDGMENT

Heard Mr.Siddique, learned counsel for the petitioner and Mr.Jain, learned counsel for the respondent.

2. Challenge is to the orders dated April 25, 2019 and February 22, 2017 made by learned trial Court and Appeal Court rejecting the petitioner's application for interim protection in the matter of construction put up by the petitioner.

3. Mr.Siddique, learned counsel for the petitioner submits that the permission granted in the year 1980 in so far as the construction in question. He submits that the structure was a ground plus one floor structure and it is true that the petitioner had put an additional second

floor. He submits that the plans were submitted to the Municipal Corporation and since there was no response there was a deemed permission. He submits that in any case opportunity for regularization was required to be given to the petitioner. For all these reasons, he submits that the impugned orders warrant interference.

4. Mr.Jain, learned counsel for the respondent defends the impugned orders on the basis of reasoning reflected therein.

5. The two Courts have concurrently held that that though there was some permission of 1980, the petitioner demolished the old structure in its entirety and has carried out a new RCC construction of ground plus two floors at the site. The petitioner's case that there is a deemed permission cannot be accepted. The petitioner has not even approach the Court with clean hands, because, the case was sought to be made that the entire construction is totally legal. The alternative plea that some time should be granted for regularization also cannot be accepted. It is duty of the petitioner to come clear before learned trial Court and on that basis seek the Courts indulgence. The petitioner by suppressing the facts persuaded the trial Court to grant for ad-interim relief, which was also continued by the Appeal Court. However, both the Courts, upon perusal of documents and record, have recorded a categorical finding that the structure in question is not backed by permission whatsoever.

6. The scope of interference against any interim orders is quite restricted. In this case, the two Courts have recorded a findings and it cannot be said that discretion has been exercised unreasonably. Accordingly, there is no case made out to interfere with the impugned orders.

7. This petition is liable to be dismissed and is hereby dismissed.

8. There shall be no order as to costs.

(M.S.SONAK, J.)