

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4846 OF 2019

Mohanlal Raghunath Oza Petitioner
Vs.
State of Maharashtra & Others Respondents

Mr. Uday P. Warunjikar with Mr. Pravartak Pathak
for the Petitioner.

Ms A.A. Purav, AGP, for the Respondent-State.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : APRIL 15, 2019

P.C:

1. The petitioner in this case has approached this Court challenging a Commencement Certificate issued by the Municipal Corporation for carrying out construction on a property, more particularly described in para 3 of the petition.

2. It is claimed that the petitioner is a co-owner/co-sharer in respect of this property.

3. The Municipal Corporation, mindful of the objections of the petitioner, has gone ahead and issued development permission contained in the Commencement Certificate. The prayer clause (a) seeks a direction to the Municipal Corporation to deal with and decide the petitioner's objections and complaints and thereafter even to quash the Commencement Certificate.

4. We are of the firm opinion that the Commencement Certificate is a format in which the development permission under Section 44 of The Maharashtra Regional and Town Planning Act, 1966 ("the MRTP Act" for short) is granted. Everything depends upon the facts and circumstances of each case, and the bar carved out by Section 149 of the MRTP Act is attracted only when the Court is fully satisfied that the issue brought for its consideration is relating to an order passed or direction issued by the State Government or order passed or Notice issued by the Regional Board, Planning Authority or Development Authority and that is why a finality is attached to it and it cannot be questioned in any Suit or other legal

proceedings. If the prayer is to set aside the Commencement Certificate, which is nothing but a format in which the development permission under Section 44 of the MRTP Act is granted, on the ground that the person who sought such Certificate had no absolute right, title and interest in the property and that it being a co-ownership property, it could not have been developed by the applicant alone, then, whether the bar would be attracted or not must be determined by the Court before which the Suit is brought, by applying the correct legal principles. These are cases where the right, title and interest in the property are in issue. The nature of the right that is claimed being contested, the Forum available to the party is a Civil Court. Once a private dispute and over a right, title and interest in the immovable property/land is raised, then, the apprehension of Mr. Warunjikar that Section 149 will be applied axiomatically without application of mind by the trial Court is not well founded.

5. We do not see any purpose in issuing a direction to the Municipal Authorities to decide whether the complaints of

the petitioner or his objections are valid and *bona fide* for that will make them the Presiding Officers of a Civil Court. They cannot substitute a Civil Court and deal with such issues as are not within their province and jurisdiction. In the circumstances, we do not think that we are obliged to entertain the writ petition, for the remedy of the petitioner is to approach a Competent Civil Court. With the above observations, the writ petition is disposed of.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)