

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7102 OF 2019

Ajinkya Naryan Khatpe and anr. ...Petitioners

Versus

Pune Metropolitan Region Development
Authority (PMRDA) through the
Metropolitan Commissioner & CEO & ors. ...Respondents

Mr. Prathamesh B. Bhargude, for the Petitioners.
Mr. A. I. Patel, AGP a/w Mr. S. B. Kalel, for the State/
Respondent.

CORAM: R. M. BORDE &
N. J. JAMADAR, JJ
DATED: 1st JULY, 2019

Oral Order :-

1. The Petitioners have approached this Court invoking the extra-ordinary jurisdiction to seek direction against Respondent no.1 to demolish the alleged unauthorised construction over the suit property erected by Respondent nos.6 and 7. The property, in question, whereupon the alleged unauthorised construction has been raised bears Gat No.289. The Petitioners claim that they are in possession of the said property since last 15 years. However, in 7/12 extract, the name of one Shivram Ganpat Pawar has been recorded as the title holder. The Petitioners claim that one Mr. Vinayak Kakde and Mr. Sunil Dimble in collusion with

the Government officials are instrumental in getting executed a sale-deed from the legal heirs of one Shivram Pawar. The property, in turn, has been sold by Vinayk Kakade and Sunil Dimble on 8th October, 2014, in favour of Respondent nos.6 and 7 vide registered Sale Deed bearing No. 6879 of 2014. Mutation Entry No.1614 has been recorded in favour of the purchasers on 9th November, 2014. According to the Petitioners, the suit property is designated for agricultural purpose whereas the same has been utilised for non-agricultural purpose. Respondent nos.6 and 7 formed an unregistered partnership firm M/s. Panchmukhi Developers and commenced illegal construction over the property. The Petitioners further contend that a suit bearing No.1775 of 2014 has been instituted by them claiming relief of declaration and cancellation of the Sale Deed and mandatory injunction against Respondent nos.6 and 7 in respect of an area admeasuring 2H 98.9R out of the suit property. The said suit is pending for disposal in Civil Court, Pune. The Petitioners further contend that a notice has been issued under Section 53(1) of Maharashtra Regional Town Planning Act, 1966, to Respondent nos.6 and 7, calling upon them to demolish the illegal construction. The Petitioners contend that though the notice has been issued, no steps have been

taken and, as such, they have approached this Court seeking direction against the concerned Respondents.

2. The petition presented before us seeking relief as referred to above need not be entertained in exercise of extra-ordinary jurisdiction of Article 226 of Constitution of India for the reason that firstly the entitlement of the petition in relation to the property, in question, is the subject matter of enquiry by the Civil Court in Regular Civil Suit, which has been instituted by the Petitioners. The questions of facts raised in the petition are required to be dealt with by the fact finding forum and the petitioners have already availed of remedy by instituting suit in the Civil Court. The Petitioners placing reliance on the judgment in the matter of ***S.J.S. Business Enterprises (P) Ltd. vs. State of Bihar and others¹***, contend that the availment of an alternate remedy for redressal of grievance would not be a bar for consideration of the petition presented by them invoking the extra-ordinary jurisdiction. The petitioners further placed reliance on the judgment in the matter of ***Sindhu Education Society vs. The Municipal Corporation of City of Ulhasnagar & ors.²*** The judgments of the Division Bench

1 (2004) 7 Supreme Court Cases 166.

2 AIR 2001 Bombay 145.

make a reference to Supreme Court judgment in the matter of ***K. Ramdas Shenoy vs. Chief Officer, Town Municipal Council, Udipi***³. In paragraph 28 of the said judgment, the Supreme Court observed thus:

“28. An illegal construction of a cinema building materially affects the right to or enjoyment of the property by persons residing in the residential area. The Municipal Authorities owe a duty and obligation under the statute to see that the residential area is not spoilt by unauthorized construction. The scheme is for the benefit of the residents of the locality. The Municipality acts in aid of the scheme. The rights of the residents in the area are invaded by an illegal construction of a cinema building. It has to be remembered that a scheme in residential area means planned orderliness in accordance with the requirements of the residents. If the scheme is nullified by arbitrary acts in excess and derogation of the powers of the Municipality the Courts will quash orders passed by Municipalities in such cases.”

3. In the instant matter, the question of individual rights of the Petitioners in respect of the property is a matter of enquiry in the civil suit already presented, whereas in the reported matter, the permissibility of construction of cinema hall in the residential locality causing disturbance to the people in general was the issue raised for determination. The Supreme Court taking note of the alleged illegal act of construction of cinema hall in the residential locality, which was stated to be cause for nuisance to the general public in the area, issued certain directives in the larger public interest. In the instant matter, the title of the petitioners in

3 AIR 1974 SC 2177.

relation to the property is yet to be adjudicated. In such circumstances, since the Petitioners have already availed of the remedy of approaching the Civil Court for redressal of grievance, in exercise of extra-ordinary jurisdiction under Article 226 of the Constitution of India, no interference is called for. The instant petition therefore stands dismissed.

[N. J. JAMADAR, J.]

[R. M. BORDE, J.]