

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 442 OF 2019

Baban Jagannath Mhaske } Petitioner
versus
State of Maharashtra and Ors. } Respondents

Ms.Tanvi Anant Sangle I/b. Mr.Pravartak
Suhas Pathak for the petitioner.

Mr.G.W.Mattos-AGP for State.

Mr.Jayant Bardeskar with Ms.Vandana
Mahadik for the Municipal Corporation.

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

DATE :- APRIL 5, 2019

P.C. :-

1. We have been repeatedly accommodating Mr.Pravartak Pathak. We have noticed that on the earlier occasion also an adjournment was sought on account of his personal difficulty.

2. The petitioner prays for the following reliefs:-

“a. Be please to issue writ of Mandamus or any other writ or order mandamus to the Respondent Nos. 2 & 3 and direct to reconstruct the structures of the Petitioner at the same place where it was in existence earlier i.e. Room No.D/57 admeasuring about 10x 15 sq. ft. situated at Pancheel Chawl, Survey No. 88(pt) CTS No. 171/A/43 (b), Krantinagar, Lokhandwala, Near Anudatta Vidyalaya Kandivali (E) Mumbai 400 101, bounded to its West: Narrow Gully, East: vacant, South: Chawls, North: vacant.

b. Or in the alternative, Petitioner may be permitted to reconstruct the structures at the cost of the Respondent No.2 at Room No.D/57 admeasuring about 10x 15 sq.ft. Situated at Pancheel Chawl, Survey No.88(pt) CTS No.171/A/43 (b), Krantinagar, Lokhandwala, Near Anudatta Vidyalaya Kandivali (E) Mumbai 400 101, bounded to its West: Narrow Gully, East: vacant, South: Chawls, North: vacant.”

3. On a reading of this petition, we find that there is a clear factual dispute involved and in the event the petitioner is aggrieved by an illegal or unauthorised act on the part of the Municipal Corporation or such other statutory authority, as is empowered to deal with the alleged unauthorised and illegal construction, none prevents the petitioner from seeking enforcement of his rights by approaching a competent court/forum. This is not a court which can determine in its limited jurisdiction as to whether the petitioner’s property was reserved for any public purpose or that on account of some personal grudge, a builder allegedly had against the petitioner, that he caused the demolition of his premises.

4. The petitioner has already approached the civil court by filing L. C. Suit No.2437 of 2018. That suit is pending. If, in the meanwhile, the construction is already demolished, the petitioner can, by amending the plaint in that suit, seek the further reliefs. Granting that liberty, we dispose of the writ petition.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)