

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

933 WRIT PETITION NO.1031 OF 2019

Padmakar s/o Ratnakarrao Pophale
Age: 46 years, Occupation: Trader,
Residing at Flat No.4, Renuka Residency,
Ulkanagari, Aurangabad.

... Petitioner

Versus

1. M/s. Chetan Constructions, through its partner Mr. Punjabrao Shrihari Wadje, Age: 57 years, Occupation: Trade, Residing at Saint Eknath Cooperative Housing Society, Jalna Road, Aurangabad.
2. The Municipal Corporation, Aurangabad Through its Commissioner, Aurangabad.

.. Respondents

...
Advocate for the Petitioner: Mr. Surve Hemant & Mr. Surve Kshitij H.
Advocate for Respondent No.2: Mr. Anand P. Bhandari
...

CORAM : MANGESH S. PATIL, J.

DATE : 16.12.2020

ORAL JUDGMENT :

. Heard. Rule. The Rule is made returnable forthwith. The matter is heard finally at the stage of admission.

2. The petitioner, who claims to have purchased the property in dispute from the Respondent No.1-Builder, has filed the suit seeking mandatory injunction against the Respondent No.1 directing it to obtain completion/occupancy certificate of the constructions. By way of temporary injunction, he prayed for restraining the officers of the respondent no.2 – Corporation from taking any step pursuant to the notice of demolition dated 29.02.2016. Since, the learned Trial Judge as well as the District Court refused temporary injunction, he is before this Court.

3. Learned advocate Mr. Hemant Surve referring to the recitals in sale deed under which the petitioner purchased the property from the respondent no.1 tried to point out that even in the sale deed there is reference to the alleged illegal construction which is stated to be a basement store ad-measuring 8.53 sq. mtrs. He would therefore submit that the petitioner being a *bona fide* purchaser of the property which was already constructed, he cannot be made liable for the consequences. It is precisely for this reason that the petitioner has sought mandatory injunction against the respondent no.1 – Builder directing him to obtain completion/occupancy certificate. He would submit that the suit itself will be frustrated if in the meantime the respondent no.2 – Corporation demolishes the construction pursuant to the notice.

4. Learned advocate Mr. Hemant Surve would then submit that since the respondent no.1 is a Builder, it was its primary responsibility to obtain the building permission and get a completion certificate as well as occupancy certificate. If it has committed the mistake or error, the petitioner may not be made to suffer.

5. Learned advocate Mr. A.P. Bhandari for the respondent no.2 – Corporation submits that it is for the owners of the property to demonstrate positively that the construction has been carried out with a prior permission and that there is a completion certificate as well as the occupancy certificate. There cannot be any negative evidence about that. The respondent no.2 being a Corporation, it is its primary duty to see to it that no illegal construction is carried out. There is a consistent finding of the two courts below which cannot be interfered with in exercise of the Writ jurisdiction.

6. At the outset, it is necessary to note that going by the reliefs claimed in the suit, no declaration as far as the notice issued by the respondent no.2 - Corporation is concerned has been sought. It is a notice purportedly under Sections 260 and 478 of the Maharashtra Municipal Corporation Act, 1949. Once it is found that there is no challenge to the notice, the rest of the matters in my considered view would become academic.

7. Be that as it may, since admittedly the petitioner has purchased the property in dispute from the respondent no.1-Builder, it is for them to demonstrate that the construction has been carried out after obtaining necessary building permission. Similarly, it is their responsibility to positively demonstrate that it was constructed in accordance with the building permission, there is a completion certificate as well as an occupancy certificate. Nothing of the sort is forthcoming. Rather the petitioner is now seeking a mandatory injunction against the respondent no.1 directing the latter to obtain a completion/occupancy certificate. If such is the state of affairs, there is no apparent error committed by the courts below in refusing to grant temporary injunction. There is no merit in the Writ Petition. It is dismissed. The Rule is discharged.

8. The observations made herein above are restricted to the decision of the present proceeding.

(MANGESH S. PATIL, J.)