

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.809 OF 2019

Pariwar CHSL Through its Hon. Secretary ... Petitioner

Versus

The Municipal Commissioner,

Thane Municipal Corporation & Ors. ... Respondents

.....

Mr. Kishor K. Malpathak for the Petitioner.

Mr. Ajit Ram Pitale, for Respondent Nos.1 and 2.

Mr. Ashutosh Ravindra Gole, for Respondent No.3.

.....

CORAM : S.J. KATHAWALLA, &

R.I. CHAGLA, JJ.

DATE : 28TH FEBRUARY, 2020.

P.C. :

1. The above Writ Petition is filed by Pariwar Co-Operative Housing Society Ltd.

for the following reliefs:

a) That this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ, Order or direction in the nature of Mandamus, directing the Respondent Nos.1 and 2 to act upon the communication No. TMC/KPS/Asstt. Com/284 dated 7th June, 2017 (Exhibit "D") and in view of the Measurement Plan submitted by the Petitioner (Exhibit "H") be pleased to direct the Respondent Nos.1 and 2 to demolish the illegally constructed tin sheet compound by the Respondent No.3 herein and permit the Petitioner to construct the compound wall;

b) Costs of this Petition be provided for;

c) Any other Order which this Hon'ble Court deems fit and proper in the facts and circumstances of the case be passed.

2. Learned Advocate appearing for the Respondent No.3 admits that a wall has been put up by the Respondent No.3 in the compound of the Society. However, Respondent No.3 has tried to justify her conduct on the ground that under a Deed of Conveyance (which according to the Respondent No.3 is a fabricated document), only a portion of approximately 502 sq.mtrs. is conveyed to the Society and an area of about 50 sq.mtrs (approximately 500 sq.ft.) is retained by her. According to Respondent No.3, she has a right to put up a compound wall to protect the area admeasuring 50 sq.mtrs.

3. Learned Advocate appearing for the Petitioner has drawn our attention to an order dated 12th February, 2014 passed by the 4th Jt. Civil Judge, J.D. Thane passed in Regular Civil Suit No. 364 of 2012 filed by Respondent No.3 against the Society as well as the Developer seeking reliefs on the ground that the agreement dated 1st November, 1991 and registered on 10th September, 2001 in favour of the Society is a forged and fabricated document and that she is the co-owner of the entire plot which is purportedly conveyed in favour of the Society. The Suit was decided against the Respondent No.3. An Appeal was filed by Respondent No.3 being Regular Civil Appeal No.111 of 2014 filed before the Ad-Hoc District Judge – 3, Thane. The Appeal Court framed issues and answered the same in favour of the Society and against the Petitioner. In fact, in the reasoning given in support of Issue Nos.1 and 2, the learned

Judge has held that *“.... it cannot be said that only a part of the plot was given for development and some portion of the plot was retained by the owners.There is nothing on record to show that out of the land purchased by the co-owners, they have retained some portion of the land and remaining portion has been given for development.”*

4. Learned Advocate appearing for the Respondent No.3 states that a Second Appeal No.55 of 2020 is filed before this Court against the judgment and order passed in the Regular Civil Appeal No.111 of 2014. However, till date there is no order in favour of the Respondent No.3.

5. In view of the aforestated specific findings of the Courts, the question of granting permission to Respondent No.3, at this stage to seek permission from the Corporation to put up a compound wall in the Society premises or seeking regularization of the compound wall already put up does not arise. The compound wall put up by the Respondent No.3 is admittedly unauthorized. She is directed to remove the compound wall within period of 48 hours failing which the Corporation shall remove the same. Needless to add that, she will be at liberty to restore the earlier position, if any, orders are passed by any Court in her favour in the proceedings, pending before this Court, or in proceedings filed in future.

6. This order is passed without prejudice to the contentions of the parties in the Second Appeal filed by Respondent No.3.

(R.I. CHAGLA, J.)

(S.J. KATHAWALLA, J.)