

Dixit

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.289 OF 2020

Neha Pramod Nimbalkar

.. Petitioner

Vs.

Vinod Co-op. Housing Society Ltd. & Anr.

.. Respondents

Mr. Prasad K. Dhakephalkar, Senior Advocate, with Mr. Sandesh D. Patil,
i/by Mr. Prithviraj Sanjay Gole, for the Petitioner.

Mr. Ashutosh Ravindra Gole for Respondent No.1.

Mr. R.S. Apte, Senior Advocate, with Mr. Mandar Limaye, for Respondent
No.2.

CORAM : A. K. MENON, J.

DATED : 16TH JUNE, 2020.

(THROUGH VIDEO CONFERENCE)

P.C. :

1. The challenge in this writ petition is to an order dated 25th September 2019 passed by the District Judge-3 and Additional Sessions Judge, Thane in Miscellaneous Civil Appeal No.164 of 2019, whereby the court allowed the Miscellaneous Civil Appeal filed on behalf of the 1st respondent – co-operative society thereby restraining the Petitioner (Original 1st defendant in the suit) from carrying out further

construction on the suit plot pending a decision in the suit. Thane Municipal Corporation, which is defendant no.2 in the suit and respondent no.2 in this petition, has also been restrained by an injunction from granting any further permissions or issuing occupancy certificate in respect of the structure which is being put up, till the decision of the suit.

2. At the hearing of this writ petition today, Mr. Dhakephalkar submits that the impugned order has proceeded on the erroneous basis that there is a vested right in the 1st respondent-society over the entire plot of land including the portion in respect of which construction has now commenced pursuant to plans, which have been sanctioned by the 2nd respondent-Corporation. He has invited my attention to provisions of the MOFA agreement, in particular, clauses 40 to 42, executed by the original builders M/s. V. Builders, a proprietary concern of one Vinod Vishanji Dharod which he submits would entitle his clients to carry out construction albeit as members of the plaintiff society. He submits that this is an aspect which has not been considered by the appellate court. As evident from the order in question there is merit in this submission.

3. At the hearing today, I have also heard Mr. Gole in support of the impugned order and Mr. Apte on behalf of the Corporation. In view of

the fact that the MCA was disposed finally, the appellate court was required to deal with the issue urged by Mr.Dhakephalkar especially since it formed an important part of his defence as highlighted in the written submissions before the court. I am therefore of the view that the matter is required to be remanded for de novo hearing on all aspects before the appellate forum, including the aspect pertaining to the rights, if any, vesting in the petitioner by virtue of the aforesaid clauses of the MOFA agreement dated 15th January, 1982, Exhibit-J to the petition.

4. In the circumstances, by consent of all parties appearing today, this petition is taken up for final disposal and I pass the following order:-

- (i) Rule, returnable forthwith. Parties through their counsel waive notice.
- (ii) By consent the impugned order dated 25th September 2019 is set aside. The appellate court viz. District Judge-3 and Additional Sessions Judge, Thane will hear the Miscellaneous Civil Appeal No.164 of 2019 afresh, without being influenced by any of the observations in this order. All aspects are kept open.

- (iii) In view of the ongoing lockdown, it will be appropriate that this Miscellaneous Civil Appeal be heard preferably within a period of six months from today.
- (iv) In the meantime, till the Miscellaneous Civil Appeal No.164 of 2019 is heard de-novo and disposed on merits, the order dated 25th September 2019 granting injunction as against the petitioner and the 2nd respondent shall continue to operate and shall continue to operate till disposal of the MCA. In the event the appeal is decided against the 1st respondent-society the injunctions shall continue to operate for a further period of four weeks from date of disposal of the MCA.
- (v) Petition is disposed in above terms.
- (vi) Parties to act on a copy of this order digitally signed by the Personal Secretary of this court.

(A. K. MENON, J.)