

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.3876 OF 2020

Amol S/o Bhalchandra Lad
Age 48 years, occ. Service
R/o R.H. B-01, Gut No. 230/2
Rameshwarpuram, Honaji Nagar
Aurangabad

Petitioner

Versus

1. The Municipal Corporation
Aurangabad
Through its Commissioner
Aurangabad Municipal Corporation
Aurangabad.

2. Sakshi Builders
Through its Partners
Sambhaji S/o Ramkrushna Atkare
Age 44 years, Occ. Business
R/o Plot No. 33, N-4, Cidco
Aurangabad.

Respondents

Mr. M.R. Sonawane, Advocate for the petitioner.
Mr. A.R. Vaidya, Advocate for respondent No. 1.

CORAM : M.G. SEWLIKAR, J.
DATE : 6th August, 2021.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.
2. By consent, heard finally at the stage of admission.

3. Plaintiff-petitioner herein filed Regular Civil Suit No. 68/2018 in the Court of Civil Judge, Senior Division (Corporation Court), Aurangabad for declaration that the notice dated 6th August, 2018 is null, void and illegal and, for perpetual injunction restraining the Municipal Corporation from taking any action on the basis of this notice.

4. Respondent-Municipal Corporation appeared in the matter and filed written statement denying all the contentions made in the plaint.

5. During the pendency of the suit, petitioner filed application under Order XXVI Rule 9 of the Code of Civil Procedure for inspection of the disputed compound wall of the Row House of the petitioner for elucidating the matter in dispute. Respondent – Municipal Corporation opposed this application.

6. Learned trial Court rejected the application filed by the petitioner holding that by filing such an application the petitioner is trying to collect evidence.

7. Heard Shri Sonawane, learned counsel for the petitioner and Shri Vaidya, learned counsel for respondent No. 1. None for respondent No. 2.

8. Learned counsel Shri Sonawane submitted that the Municipal Corporation has issued notice dated 6th August, 2018 calling upon him to demolish the illegal construction of compound wall made by the petitioner. He submitted that this application for appointment of Court Commissioner is filed with an object that the Commissioner will be able to elucidate whether construction is legal or illegal. He submitted that the application is not filed for collection of evidence. It is filed for elucidation of the matter in dispute. He submitted that notice has been issued indicating therein that petitioner has made encroachment and without measuring the land encroachment cannot be decided. He, therefore, prayed for appointment of Court Commissioner.

9. Learned counsel Shri Vaidya opposed the application contending that the Municipal Corporation has not issued notice for removal of encroachment. He submitted that the impugned notice clearly states that the petitioner has made construction without prior

permission from the Municipal Corporation. For deciding whether construction is legal or illegal, appointment of Court Commissioner is not necessary. He, therefore, prayed for rejection of the application.

10. From the impugned notice dated 6th August, 2018, it cannot be inferred that the Municipal Corporation has issued notice for removal of encroachment. Notice specifically states that the petitioner has made construction of compound wall without obtaining prior permission from the Municipal Corporation. The notice nowhere indicates that the petitioner has made encroachment by constructing a compound wall. For deciding whether construction was without permission or with permission, appointment of Court Commissioner is not necessary.

11. In this view of the matter, I do not see any substance in the petition. Learned trial Court committed no error in rejecting the application. Writ petition is bereft of any merit. Hence it is dismissed with no order as to costs. Rule discharged.

(M. G. SEWLIKAR)
Judge