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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 3482 OF 2018

Bharti Dilip Waghchaure ... Petitioner
Vs.
Shubham Prakash Dayma & Ors. ... Respondents

Mr. Bhushan Deshmukh, for the Petitioner.
Mr. K. R. Parekh, for the Respondent No. 1.
Mr. Sachin Kadam, for the Respondent Nos. 2 and 3.
Ms. Kavita Solunke, AGP for the Respondent Nos. 4 & 6.
Mrs. Deepalee Patil, Town Planner, Nashik – present in the Court.

**CORAM : S. J. KATHAWALLA &
VINAY JOSHI, JJ.**

DATE : MARCH 1, 2021

ORAL JUDGMENT [PER : VINAY JOSHI, J.]

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The Petitioner is seeking demolition of the unauthorised structure raised by Respondent No. 1, adjacent to her premises. Respondent No. 1 had purchased a piece of land bearing Survey No. 673, 674, 675 and 676 on 19th November, 2014 from its erstwhile owner. Thereafter Respondent No. 1 had raised a structure over the entire

premises without obtaining the prior permission from Respondent No. 2 - Lasalgaon Gram Panchayat, which is a planning authority. Resultantly, the unauthorised structure has blocked the Petitioner's light, air, access and ventilation. Though the Petitioner made several complaints to the local authority, no action has been taken. Since the structure was unauthorised, Respondent No. 2 Gram Panchayat issued a notice dated 5th December, 2016 to Respondent No. 1 in terms of Section 52 and 53 of the Maharashtra Village Panchayats Act, 1959 (for short the "Act") requiring him to remove the unauthorised structure. As the notice remained uncomplied, it was followed by another notice dated 6th January, 2017 seeking removal of the unauthorised structure.

3. Respondent No. 1 contested the petition vide reply Affidavit dated 27th August, 2019. It is not denied that he has raised the structure over the subject property. Respondent No. 1 has stated that he has already challenged the action of Gram Panchayat issuing notice under S. 52 and 53 of the Act, by filing a civil suit. Moreover, he contends that his proposal for regularisation is under consideration.

4. Undisputedly, Respondent No. 1 had raised the structure without obtaining prior permission of the local authority. There is no

dispute that repeatedly, notices were issued by the local authority under Sections 52 and 53 of the Act for removal of the unauthorised structure. The only stand taken by Respondent No. 1 is that his proposal for regularisation is pending. Though Respondent No. 1 has filed a civil suit challenging the notices, interim protection was not existing from June, 2019 onwards.

5. Though Respondent No. 1 insists that his proposal for regularisation is pending, except for forwarding a copy of the plan, there is nothing to show that any regularisation proposal is submitted.

6. We are therefore, satisfied that the Respondent No.1 has since inception erected a structure without obtaining prior permission from the concerned authorities. Moreover, there is no material to indicate that proposal for regularisation was forwarded and is pending. In other words, there is no justification for Respondent No. 1 to seek protection in regard to his illegal structure. The local authority is bound to remove illegal/unauthorized structures. Already two notices were issued to him for removal of the unauthorised structures, but the same have not been acted upon. In the circumstances, the construction raised by Respondent No. 1 being totally unauthorised and illegal,

requires immediate demolition. In view of the above, the Writ Petition stands allowed. The Respondent No. 2 to 6 are directed to forthwith demolish the illegal structure raised by Respondent No. 1 on the subject premises. Rule is made absolute in the aforesaid terms.

[VINAY JOSHI, J.]

[S. J. KATHAWALLA, J.]