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

WRIT PETITION NO. 6440 OF 2019

Shri. Ganesh Ragunath Bhise

....Petitioner

V/s.

Pune Municipal Corporation and others

.....Respondents

Mr. Sachin S. Punde for the Petitioner

Ms. Madhavi Ayyappan i/b Talekar & Associates for Respondent nos.
1 & 2

Mr. Aniesh S. Jadhav for Respondent nos. 3 & 4

CORAM : NITIN W. SAMBRE, J.

DATE: MARCH 3, 2021.

P.C.:

1] This Petition is by Plaintiff in R.C.S. No. 447 of 2014 which is for declaration and mandatory injunction.

2] The Petitioner in the said Suit moved an Application Exhibit 5 under provisions of Order XXXI Rule 1 & 2 of Code of Civil Procedure, 1908 [Hereinafter referred to as 'CPC' for the sake of brevity] wherein on 29/11/2018, Court of Civil Judge Junior Division, Pune allowed the Application and restrained Respondent from demolishing the Suit

structure.

3] The said order was subject matter of challenge in Misc. Civil Appeal No. 60 of 2019 at the behest of Defendant Nos. 3 & 4. Learned District Judge vide impugned order dated 16/04/2019 allowed the said Appeal. As such, this Petition.

4] Mr. Punde learned counsel appearing for the Petitioner while questioning the order impugned would urge that Petitioner's undivided share in the Suit property can be inferred from the sale deed dated 29/01/1996. Temporary structure constructed thereof was sought to be demolished by the Respondent-Municipal Corporation and as such, according to him, temporary injunction was sought which was rightly so granted by the Trial Court. According to him, Appellate court without considering the evidence on record in the backdrop of factual matrix, vacated the said injunction as a consequences of which if the Suit property is demolished, Petitioner is likely to suffer irreparable loss.

5] Learned counsel for the Respondents supports the order impugned.

6] Considered rival submissions.

7] Proceedings have a chequered history. Suit property claim to have been purchased on 29/01/1996 by the Petitioner and other three sisters. Respondent sisters entered into development agreement on 06/02/2002 which was subjudiced in Suit No. 46 of 2003.

8] Since there was a structure on the Suit property pursuant to the prayer made under the Maharashtra Gunthewari Developments Act, 2001, (Hereinafter referred to as 'Gunthewari Act' for the sake of brevity) Suit property and the structure thereof claimed to be regularised, however, power of attorney holder lodged an objection about existence of title dispute and as such, on 05/08/2003 regularisation earlier granted was cancelled.

9] Order dated 05/08/2003 was subject matter of R.C.S. No.

1125/2003 which was dismissed on 07/07/2005. Appeal being 472 of 2005 resulted into remand of the matter. Municipal Authorities pursuant to the Judgment of the Appellate court directed grant of opportunity of hearing to the Petitioner. Order dated 05/08/2008 cancelling the regularisation came to be maintained by the planning authority as it was noticed that there exist a civil dispute of title amongst the Respondents. As Gunthewari Act, particularly proviso (e) (iii) to Section 3 of Gunthewari Act operates as an embargo on the right of the Petitioner to claim regularisation.

10] Feeling aggrieved, Petitioner preferred Suit being R.C.S. No. 1638 of 2013 which was withdrawn on 24/02/2014. Petitioner immediately thereafter preferred suit being R.C.S. No. 447 of 2014 claiming injunction in which injunction was refused which is questioned in the present Petition.

11] If the order dated 29/08/2013 is perused, planning authority after hearing the Petitioner upheld the earlier order dated 05/08/2003 thereby cancelling the order of regularisation passed in favour of Petitioner.

12] Said order was subject matter of challenge in Suit No. 447 of 2014 i.e. present Suit. As far as order of Additional city Engineer, PMC dated 29/08/2013 is concerned, it is observed that Petitioner has given incorrect information about absence of any litigation in regard to the Suit property while seeking regularisation under the Gunthewari Act. Regularisation granted came to be cancelled in view of pendency of aforesaid proceedings i.e. interse dispute between Petitioner and his sisters.

13] It is also not in dispute that Petitioner initiated a Suit for partition being R.C.S. No. 236 of 2002 which was later on withdrawn.

14] As such, there is hardly any material on record to infer that development on the said property is with the sanction and permission of the planning authority. Rather the record depicts that there exist a title dispute which would operate as an embargo on the right of the Petitioner to claim regularisation under Gunthewari Act.

15] Claim of the Petitioner that under the Gunthewari Act, regularisation was granted, however, cancelled in view of objections raised by the co-owner, *prima facie* demonstrates that Petitioner has secured regularisation by suppressing the fact of pendency of litigation.

16] In the aforesaid background, order of vacation of injunction appears to be quite just and proper. No case for interference is made out. Petition fails, stands dismissed.

[NITIN W. SAMBRE, J.]