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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5022 OF 2022**

Manoj Dilip Barate and Ors. Petitioners.
V/s
The Commissioner,
Pune Municipal Corporation and Ors. Respondents.

**WITH
WRIT PETITION NO.5043 OF 2022**

Malan Ganpatrao Asale Petitioner.
V/s
The Commissioner,
Pune Municipal Corporation & Ors. Respondents.

Mr. Milind Deshmukh for the Petitioners in both the above Writ Petitions.
Ms. Manisha Jagtap for the Respondents/PMC.

CORAM: NITIN W. SAMBRE, J.

DATE: APRIL 27, 2022

P.C.:-

- 1] Both these Petitions can be disposed of by this common order.

- 2] Suit preferred by the Petitioners/Plaintiffs is for declaration and injunction. Prayer of the Petitioners for grant of temporary injunction came to be rejected, which order was confirmed in appeal preferred under Order 43 Rule 1(r) of the Civil Procedure Code. As such, these

Petitions.

3] The Court directs Ms. Manisha Jagtap, Panel Counsel for Respondents/Pune Municipal Corporation who is present to accept notice for Respondents.

4] Submissions of Mr. Deshmukh, Counsel for the Petitioners are, structure in question is not interfering with flow of traffic or otherwise and as such structure be permitted to be continued by granting injunction and the prayer of the Petitioners/Plaintiffs for regularization of structure needs to be decided expeditiously.

5] While opposing the prayer, Counsel for Respondents would urge that the orders impugned reflect that Petitioners were not granted sanction either by Grampanchayat before the area was brought within municipal limits of Pune Municipal Corporation or by Pune Municipal Corporation. As such, Corporation was justified in issuing notice. She would further claim that against concurrent findings, in this background, Court should not interfere.

6] Considered submissions.

7] Counsel for the Respondents was justified in inviting an attention of this Court to considerations by both the Courts below while rejecting prayer for grant of temporary injunction. She is justified in claiming that permanent structure is constructed that too without sanction from the Corporation or from Planning Authority under Bombay Village Panchayat Act.

8] Respondent/Planning Authority, in view of the provisions of the Maharashtra Regional Town Planning Act and the Maharashtra Municipal Corporation Act has issued notice for removal of illegal construction. Both the Courts below had held that in absence of sanction from the Grampanchayat or Municipal Corporation, Petitioners are not entitled for relief of injunction, as prayed.

9] In the wake of above, submissions of Mr. Deshmukh that structure in question is not interfering with flow of traffic or otherwise and as such structure be permitted to be continued by granting injunction, cannot be accepted. Constructed structure in the absence

of permission from Planning Authority is rightly so termed to be illegal by the Respondents/Defendants under the building bye-laws. Admittedly, there does not exist any such permission from Planning Authority in favour of the Petitioners.

10] That being so, against concurrent findings, I hardly see any reason which warrants interference. As such, both these Petitions stand dismissed.

11] However, this will not preclude the Petitioners from moving before the Planning Authority i.e. Pune Municipal Corporation for regularization of the suit structure. If such prayer is already moved before the Corporation, this Court expects the Corporation to deal with the same in accordance with law expeditiously. If not so moved, it shall be open for the Petitioners to move before the Corporation with such prayer.

(NITIN W. SAMBRE, J.)