

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

WRIT PETITION NO. 5285 OF 2022

Faizan Azimullah Azmi

... Petitioner

Vs

Bhiwandi Nizampura Corporation & Anr.

... Respondents

Mr. Sanjay Patil for the petitioner.

CORAM : NITIN W. SAMBRE, J.

DATED : 2nd May, 2022

P.C.:

1. This petition is by the plaintiff to RCS No. 466 of 2014 questioning the order passed below Exhibit-5 rejecting prayer for grant of temporary injunction during pendency of the suit vide order dated 02/02/2022 confirmed in an Appeal being Mis. Civil Appeal No. 24 of 2022 dismissed on 01/04/2022 by the District Judge, Thane.

2. The facts necessary for deciding the present petition is as under.

3. The petitioner in the aforesaid suit against the respondents sought injunctions from demolishing any part or portion of nine suit galas i.e. suit house no. M. H. No. 687 and 2340 at Nagaon, Bhiwandi without following due process of law, from cancelling the

tax assessment, house numbers and from disturbing the lawful possession of the plaintiff and injunction is also sought not to prevent the petitioner/plaintiff from executing the development work on the suit land.

4. The claim of the petitioner/plaintiff is based on the development agreement dated 01/02/1985 entered into with the respondent/land owner, pursuant to which the petitioner/plaintiff allegedly came in physical possession of the suit property. It is claimed that the suit property is consisting of land admeasuring 10,000 sq. ft./yard out of survey no. 29 at Nagaon.

5. It is also claimed by the petitioner that after having obtained NA permission on 19/09/1986 in relation to the suit property, the petitioner received commencement certificate on 11/11/1986 vide permission no. 156.

6. It is further claimed that two separate permissions were issued by the respondent-corporation on 27/01/1986 vide permission no. 162 and another 25/11/1986 vide permission no. 178. The aforesaid permissions claimed to have been based on sanctioned maps for development of the property. It is claimed that on 01/02/1988, respondent issued him completion certificate allotting Municipal House Nos. 1147 & 1148, which was changed

to municipal house no. 867, which consists of three galas.

7. According to the petitioner one Shafi Nadkar lodged false claim which has resulted into initiation of Special Civil Suit No. 714 of 1990 by the petitioner with a relief for declaration, injunction and specific performance. It is also claimed that the said suit came to be decreed on 20/02/2010 with a declaration of lawful possession of the petitioner over the suit property and also specific performance was granted. According to him, the said Shafi preferred first appeal bearing First Appeal No. 633 of 2010 which is at present pending adjudication before this Court. As such, according to him the petitioner after having got proper sanctions from the respondent-corporation developed the property, however, he is threatened with the demolition of the suit properties consisting of nine galas at the behest of said third person who is acting hand in glove with respondent officials.

8. The Trial Court while considering the prayer for injunction has initially granted ex-parte injunction on 10/06/2014. After the respondent-corporation submitted its reply and written statement, heard the application Exhibit-5 on merit and rejected the prayer for grant of injunction vide order dated 02/02/2022 which was confirmed in Mis. Civil Appeal on 01/04/2022, as such this Petition.

9. The contentions of learned counsel for the petitioner Mr Patil are, both the Courts have committed an error in failing to consider the sanctions granted by respondent – Corporation, the judgment of the Court in Special Civil Suit No. 714 of 1990. So as to substantiate his contentions, he has specifically relied on the pleadings and the reliefs granted in Special Civil Suit No. 714 of 1990.

10. I have appreciated the said submissions in the light of the written statement / reply filed by the respondent-corporation. It appears that both the Courts below have noticed that the petitioner has failed to discharge initial burden of demonstrating a prima facie case in his favour as he has not placed on record documents in regard to the construction permissions, so as to establish / justify his case of lawful construction, commencement certificate. The Court has also noticed that the copy of the map which speaks of construction permission was duly approved by the respondent-corporation were not produced on record. Though the petitioner had an opportunity to produce the said documents, he has failed to produce the same inspite of the fact that the injunction application remained pending for more than almost for 6 years. As such the Trial Court has drawn presumption u/s 114(g)

of the Evidence Act thereby presuming the existence of facts as to non-availability of sanctioned plan in relation to suit premises. The said presumption is in the backdrop of failure of the petitioner to produce appropriate evidence to that effect.

11. The fact remains that the development, if any, to be carried out within a municipal area has to be in accordance with the development / building control regulation that to after obtaining written permission from the development authority i.e. respondent no. 1 herein. Once the petitioner has failed to produce the sanctioned map, in my opinion the Trial Court was justified in rejecting the prayer for grant of temporary injunction. The Appellate Court while reappreciating the documentary evidence was conscious of the fact that the claim is in regard to nine Galas i.e. house of M. H. No. 687 and 2340.

12. The petitioner who has referred to commencement certificate dated 11/11/1986 whereby the permission no 156 was granted, another permission dated 27/01/1986 bearing permission nos. 162 and permission no. 178 dated 25/11/1986 are in relation to construction of two galas. The Court then noted that the galas constructed were assessed as house no. 1147 and 1148 which was then re-numbered as house no. 867. As such, it was expected

of the petitioner to demonstrate that the injunction in regard to nine galas which he is claiming is in relation to the aforesaid permissions granted by the respondent-corporation, which he has failed to demonstrate. The assessment orders or the house numbers by itself will not legalize the illegal construction carried out by the petitioner.

13. In this background, the concurrent findings recorded by both the Courts below are based on the appreciation of the pleadings, evidence on record.

14. In the aforesaid background, having appreciated the entire gamut of the matter I hardly see any illegality committed by both the Courts below in rejecting the permission for grant of temporary injunction.

15. That being so, no case for interference is made out. The Petition as such fails and stands dismissed.

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(NITIN W. SAMBRE, J.)