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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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ANANDRAO
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Date: 2022.11.17
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WRIT PETITION NO.8942 OF 2022

Smt.Rekha D. Shingade

...Petitioner

V/s.

State of Maharashtra & Ors.

...Respondents

Mr.Mukesh Subramaniam with Mr.Rony Wilson and Mr.Jaydeep
Tanna for the Petitioner.

Mrs.A.A. Purav, AGP for the State – Respondent Nos.1, 4 and 5.

Mr.Telesh Dande for the Respondent Nos.2 and 3.

Mr.Nitin V. Gangal for CIDCO - Respondent No.6.

Mr.Sharique Nachan with Mr.Amaan Khan i/b Judicature Law
Associates for the Respondent No.9.

Mr.Sachin P. Shetye for the Respondent No.10.

Mr.Saurabh Oka for the Respondent No.11.

Mr.Bhagwan H. Patil - Respondent No.7 is present in Court.

CORAM : R.D. DHANUKA &
KAMAL KHATA, JJ.
DATE : 14TH NOVEMBER, 2022.

P.C. :-

1. Learned counsel for the petitioner states that all the respondents are served. Except the respondent no.8, all the respondents are represented before this Court. The respondent no.8

remained absent though served.

2. The respondent nos.7 and 9 to 12 are not in a position to show that any permission obtained from the respondent nos.2 and 3 for carrying out any construction. The respondent no.7, who is present in Court, states that he does not have any permission to carry out construction and has already stopped the construction after receipt of the notice of this Court.

3. Mr.Dande, learned counsel for the respondent nos.2 and 3 and Mr.Gangal, learned counsel for the respondent no.6 jointly state that the entire construction being carried out by the respondent nos.7 to 12 are without seeking any permission and are unauthorized. Their respective clients are unable to take any action against the respondent nos.7 to 12 for want of police protection. Their respective clients apprehend that if they take any coercive steps against the unauthorized construction being carried out at the cost of the respondent nos.7 to 12, there may be law and order situation.

4. At this stage, we do not propose to go into the merits of the matter whether the construction carried out by the respondent nos.7 to 12 is unauthorized or not except in case of the respondent no.7, who is present in Court and makes a statement that the construction is unauthorized.

5. Be that as it may, we direct the Municipal Corporation as

well as CIDCO to initiate action under the provisions of the Maharashtra Municipal Corporation Act read with MRTP Act against the respondent nos.7 to 12 for demolition of the alleged unauthorized construction, if any, respectively. The respondent nos.7 to 12 'shall not carry out any construction or alteration in any manner whatsoever till such action is initiated by the respondent nos.2 and 3 and the respondent no.6 and during the pendency of such action without obtaining prior sanction of the respondent nos.2 and 3 and the respondent no.6 as the case may be. Whether the construction already carried out by the respondent nos.7 to 12 being unauthorized or not would be subject matter of such action. The respondent nos.7 to 12 would be at liberty to defend such action in accordance with law.

6. The writ petition is accordingly disposed of in aforesaid terms. There shall be no order as to costs. Parties to act on the authenticated copy of this order.

7. The respondents would be at liberty to raise the issue of maintainability of unauthorized construction, if any, issued by the Municipal Corporation as well as CIDCO. If any such issue is raised by any of the respondents, the same shall be dealt with by the authorities on the basis of factual material on record.

(KAMAL KHATA, J.)

(R.D. DHANUKA, J.)