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

WRIT PETITION NO. 6502 OF 2021

Sakharam Bhikaji Khatle

... Petitioner

V/s.

The State of Maharashtra through
The Secretary, Ministry of Urban
Development Department,
Mantralaya, Mumbai and Ors.

... Respondents

Mr. Amey Deshpande for the Petitioner

Mr. Amit Gharte for Respondent Nos. 7 & 8

Mr. Vishal Kanade i/b. Vijay Hinge for Respondent No.2

Mr. Anil Ankurkar, Senior Advocate i/b. S.P. Shetty and Deepti B.
Mistry for Respondent Nos. 3 to 6

Ms. R.M. Shinde, AGP for the Respondent - State

***CORAM : NITIN JAMDAR &
SHARMILA U. DESHMUKH, JJ.***

DATE : 30 SEPTEMBER 2022

P.C. :-

Heard the learned Counsel for the parties.

2. By this Petition, the Petitioner is seeking the following
reliefs:-

“(a) This Hon’ble Court be pleased to issue writ of mandamus or writ in the nature of mandamus or any other writ, order, direction to the Respondent No.2 to take immediate action against the illegal structures of the Respondents including action of demolition thereof.

(b) This Hon'ble Court be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other writ, order, direction to the Respondent No.2 that not to grant any permission to new construction or to grant completion/part completion certificate to the Respondent Nos. 3 to 10 for Gat Number 224/1/224/2 having 2 Plot Nos.1 and 2 till the encroachment is there on Petitioner’s property.

3. The Petitioner has founded the Petition in two different capacities. Firstly, as an owner of Survey No.225 situated at Igatpuri and secondly, as a resident of Igatpuri in general. As an owner, the Petitioner makes a grievance that Respondent Nos.3 to 6 have encroached upon the property held by the Petitioner. As a resident, the Petitioner has challenged the action of Respondent – Municipal Corporation in granting a completion certificate in respect of the construction carried out by Respondent Nos. 3 to 6 and the order of regularization of the structure passed by the Respondent – Municipal Corporation.

4. As regards the grievance made by the Petitioner as an owner that his property is encroached, as rightly contended by the Respondents, the Petitioner will have to get his rights as the owner decided by the Competent Court and seek the necessary interim

order. The learned Counsel for the Petitioner states that the Petitioner would do so and also states that the sub-Divisional Officer has already passed the order dated 20 December 2021 directing the Respondent Nos. 3 to 6 to remove encroachment against which these Respondents have filed an appeal, and in this appeal, the Petitioner would agitate all his grievances regarding encroachment. Even otherwise, whether Respondent Nos. 3 to 6 have encroached on the property of the Petitioner would entail adjudication in various disputed questions of fact and a writ petition in that regard would not be an appropriate remedy.

5. As regards the grievance made by the Petitioner as a resident of the area regarding the illegality of the construction of Respondent Nos. 3 to 6, and the action of the Municipal Corporation is concerned, we have gone through the reply filed by the Pankaj Vishnu Gosavi, Chief Executive Officer of Respondent No.2 – Municipal Council. In the affidavit on oath, the Chief Officer has stated as under :-

“8. I say that Respondent Nos. 3 to 6 filed an application dated 17.05.2021 for grant of occupation certificate in respect of the building. On receipt of the aforesaid application, the Chief Officer, Igatpuri Nagar Parishad, Igatpuri has visited the site for inspection of the said building alongwith his officials and inspected the construction of the building. I say that Respondent Nos.3 to 6 have constructed the building in accordance with the sanction plan and therefore vide letter dated

25.06.2021 the Respondent No.2 issued a occupation certificate in favour of Respondent Nos. 3 to 6.

9. I say that Respondent Nos. 3 to 6 have constructed the building in accordance with sanctioned plan and provisions of law. I further say that there are no illegal structures and constructions in the aforesaid property. I submit for the aforementioned reasons the writ petition may be dismissed with exemplary costs.

10. Without prejudice to the aforesaid contentions, the Respondent No.2 shall now deal paragraph wise to the Petition as under :-

a. With reference to paragraph 1 of the Petition, the Respondent No.2 has no comments to offer, and the same are matter of record.

b. With reference to paragraph 2(a) to 2(c) of the Petition, the Respondent No.2 have no comments to offer, and the same are matter of record.

c. With reference to paragraph 2(d), 2(e), 2(f) of the Petition, the Respondent No.2 states that the averment made in the said paras does not offer any comment and the same are matter of record.

d. With reference to paragraph 2(g) of the Petition, the Respondent No.2 states that earlier they have issued notice to the Respondent No.3 in respect of the site office. After receipt of the notice the Respondent No.3 has replied and he has filed undertaking that site office will be removed after the construction of the building is complete as per the plan. It is further submitted that the application dated 05.04.2021 and 31.05.2021 is in respect of encroachment and Appeal pending before the Addl. Collector, Nashik. It is not concerned with the

Respondent No.3 and sanctioned plan.

e. With reference to paragraph No. 2(h) of the Petition, the Respondent No.2 states that the Respondent No.3 has submitted an online application dated 31.12.2020 for the amended building plan. I further say that Respondent No.2 has scrutinized the amended building plan and sanctioned plan and found out that there is no FSI violation and amended building plan falls within the Rule 6.8(8) of Unified Development Control and Regulation. Accordingly, amended building plan is allowed vide letter dated 25.06.2021.

f. With reference to paragraph No.2(i) of the Petition, the Respondent No.2 states that the contents and allegations of the said paragraph are false and totally denied. I further say that the Respondent Nos. 3 to 6 have constructed the building in accordance with the sanction plan. I say that I have visited and inspected the construction of the building plan and I found out that the building is constructed as per the sanctioned plan. Hence, occupancy certificate dated 25.06.2021 was issued.

g. With reference to paragraph No.3(a) of the Petition, the Respondent No.2 states that there are no illegal structures in the suit property. I further say that buildings are constructed in accordance with the sanctioned plan.

h. With reference to paragraph No.3(b) of the Petition, the Respondent.2 state that bungalows have been constructed in accordance with the plan. I further say that the averment made in the said paras does not offer any comment.

i. With reference to paragraph No.3(c) of the Petition, the Respondent No.2 state that contents and allegations of the said paragraph are false and absolutely denied. I further say that the construction of the swimming pool and site office is in accordance with amended sanctioned plan.

j. With reference to paragraph No.3(d) and (e) of the Petition, the Respondent No.2 state that the contents and allegations of the said paragraph are false and totally denied. I further say that on the basis of the application filed against Respondent No.3, the office of the Respondent No.2 has issued notice to Respondent No.3. It is further submitted that there is a dispute between Respondent Nos. 3 to 6 and Respondent Nos. 7 to 10.

k. With reference to paragraph No.3(f) of the Petition, the Respondent No.2 state that the contents of the said paragraph are totally denied. I further say that Respondent No.2 has granted occupancy certificate on 25.06.2021.

l. With reference to paragraph No.3(g) of the Petition, the Respondent No.2 state that contents and allegations of the said paragraphs are false and totally denied. I further say that the record shows that Respondent Nos. 3 to 6 have constructed the building in accordance with the sanctioned plan and therefore the Respondent No.2 have issued occupancy certificate.”

6. The Chief Officer, thus, on oath, has stated that the construction was as per the sanctioned plan and as per law. We are also informed by the learned Counsel for the Municipal Council that

in view of a subsequent modification in the relevant Development Control and Regulation, which have been made applicable to the city of Igatpuri, the construction for which the grievance was made is now made permissible. The role of the Petitioner as a resident of the city is limited, having brought a grievance regarding the legality of the structure of Respondent Nos.3 to 6. Thereupon the Court had called upon the Municipal Council to explain the position which has been stated on oath by the Chief Officer of the Municipal Council. There is no reason why we should not accept the statements made on oath by the Chief officer. We thus do not find any warrant to proceed further in the matter. Needless to state that if the Petitioner succeeds in demonstrating that there is an encroachment on his property, then the Competent Court can always pass an order for removal of such encroachment/structure irrespective of the fact that it is legal. If the Petitioner files a civil suit within a period of two weeks and takes out any interim application, the concerned court will take up the application on a priority basis on its own merits.

7. The learned Counsel for the Petitioner seeks continuation of the order of status quo, which was granted on 17 January 2022. The learned Counsel for Respondent Nos. 3 to 6 opposes. We have perused the order dated 17 January 2022. The order of status-quo to be maintained in respect of the suit property does not give any particulars as to what was the prevailing situation then. According to the Respondent, Nos. 3 to 6, at that time, third-

party rights were already created. According to the Petitioner, no such third party rights were created, and if the status quo is not continued, the Respondent Nos. 3 to 6 might create third-party rights in the property. We have observed that the appropriate course of action for the Petitioner would be to agitate his case in the appeal filed by the Respondent Nos. 3 to 6 or to file a substantive civil suit. The Petitioner has these remedies to pursue where the *inter se* rights between these parties would be decided. Since it is not clear what the position is as of today, we do not wish to add to the multifarious situations that may arise in simplicior continuing the order of the status quo without defining it. Needless to state that since these proceedings are pending, the steps taken by Respondent Nos. 3 to 6 will solely be at their own risk and consequences.

8. Keeping the contentions of the parties open on merits regarding the aspect of encroachment, the Writ Petition is disposed of.

SHARMILA U. DESHMUKH, J.

NITIN JAMDAR, J.

JYOTI
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PAWAR
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by JYOTI
PRAKASH
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2022.10.03
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