

Prajakta Vartak

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

**WRIT PETITION NO. 8538 OF 2015
WITH
INTERIM APPLICATION NO. 1185 OF 2023
WITH
CIVIL APPLICATION NO. 149 OF 2016**

Smt. Manisha Y. Tambe .Petitioner
Vs.
Kalyan Dombivli Municipal Corporation & Ors. .Respondents

Mr. Ranjit Shinde with Mr. Hemant Pathak for Applicant/Intervener in IA
1185/23.
Mr. A. S. Rao for Respondent/KDMC.

**CORAM : G. S. KULKARNI &
R. N. LADDHA, JJ.
DATE : APRIL 24, 2023**

P.C.:

1. We have heard Mr. Rao, learned counsel for respondent no.1-KDMC and Mr. Pathak, learned counsel for the applicant-Balaji Garden Co-operative Housing Societies Federation Ltd. who has filed Interim Application No. 1185 of 2023 for intervention. The petitioner-Smt. Manisha Y. Tambe has filed the present petition praying for the following reliefs:-

“A) This Hon'ble Court be pleased to admit this Writ Petition.

B) This Hon'ble court be pleased to issue a writ of Mandamus or or a writ in the nature of certiorari or any other appropriate writ,

order or direction against the Respondent no. 1 corporation thereby pleased to call for the entire record and proceedings of regarding the subject matter of the Petition.

C) This Hon'ble court after examining the legality, validity and propriety of the impugned order i.e. Order dated 22-1-2015 passed by the Respondent No. 1 Corporation be pleased to issue a writ of mandamus or a writ in the nature of certiorari or any other appropriate writ / order or direction thereby hold and declare that the order dated 22-1-2015 passed by the Respondent no. 1 is in violation of principles of natural justice as the same has been passed without giving opportunity of personal hearing so also in violation of fundamental rights conferred under Art 21 of the Constitution of India.

D) This Hon'ble court after examining the legality, validity and propriety of the impugned order i.e. Order dated 22-1-2015 passed by the Respondent No. 1 Corporation, be pleased to issue a writ of mandamus or a writ in the nature of certiorari or any other appropriate writ, order or direction thereby hold and declare that the action on the part of the Respondent No.1 corporation to issue notice dt. 26-12-14 and to pass the impugned order dated 22-1-2015 is discriminatory and at the instigation and in collusion with the Respondent no.6 Developer and facilitate him to construct the said approach road by illegally demolishing the room of the poor petitioner and other room owners in the chawls.

E) Consequently this Hon'ble court further be pleased to issue a writ of mandamus or a writ in the nature of certiorari or any other appropriate writ order or direction thereby quash and set aside the impugned order dt. 22-1-2015 as the same is illegal void ab initio, in violation of natural justice, fundamental rights, against the principles of equity and bad in law.

F) This Hon'ble court be pleased to issue a Writ of mandamus or a writ in the nature of certiorari or any other appropriate writ, order or direction thereby issue appropriate directions from this Hon'ble Court against KDMC to not to take any coercive or drastic steps of demolishing the said Room No.5 of the petitioner in the said Chawls or structure constructed and situated at survey number 8 Hissa number 2 (p) at Mouje – Ayre, Dombivli East, District – Thane.

G) Pending the hearing and final disposal of the above writ petition this Hon'ble court may be pleased to stay the effect, implementation and execution of the impugned order dated 22-1-2015 i.e. to direct the Respondent not to take any drastic step of demolition of room no. 5, Om Sai Nagar Chawl, lying and situated at Survey no.8 Hissa No. 2 (p) at Mouje – Ayre, Dombivli East,

District – Thane.

H) Interim and/or Ad-interim relief in terms of prayer clause (F) and above may be granted.

I) This Hon'ble Court may be pleased to finally decide this writ petition at the admission stage.”

2. We have perused the order dated 22 January, 2015 passed by the Ward Officer, G Ward, Kalyan Dombivli Municipal Corporation which is a reasoned order, which observes that the construction in question as undertaken by the petitioner was unauthorized. It further observes that it was not a construction which was undertaken as a consequence of the road widening.

3. This petition was moved before a co-ordinate bench of this Court on 24 August, 2015 when the following order was passed:-

“1 Not on board. Taken on board.

2 Heard learned Advocate for the petitioner. Issue notice to the respondents returnable on 25.9.2015 which is the scheduled date. Till the next date, the impugned order dated 22.1.2015 shall not be implemented subject to condition that even the petitioner shall maintain status-quo in all respects with regard to the property subject matter of the impugned order. In addition to the notice through court, the petitioner shall serve private notice to 1st respondent. If proper affidavit of service is not filed by the petitioner within 3 weeks from today, ad-interim relief shall stand vacated without further reference to the court.”

4. The above ad-interim order has continued to operate till date. In the meantime, the intervener-Balaji Garden Co-op. Housing Societies Federation Ltd. being a party affected by the present proceedings and by

the ad-interim protection being granted by the Court, has moved the above interim application. On 07 February, 2023 when the proceedings of interim application were listed before this Court, a co-ordinate Bench of this Court recorded a statement as made by Mr. Rao that the counsel who was representing the petitioner-Smt. Manisha Tambe, has expired. Accordingly the Court issued a notice to the petitioner for engaging another counsel, which was made returnable on 08 March, 2023. The said order is required to be noted which reads thus:-

“1. It is submitted by Mr. Rao, learned counsel for the Respondent No.1 that the learned counsel, who was representing the petitioner is no more.

2. Issue notice to the petitioner for engagement of another counsel, returnable on 8th March, 2023.

INTERIM APPLICATION NO.1185 OF 2023

1. Time is granted to the learned counsel for the respondents to file reply to the interim application.

2. A copy of the interim application shall also be served on the original petitioner. 3. Stand over to 8th March, 2023.”

5. The proceedings thereafter were listed before this bench on 17 April, 2023 when the following order came to be passed:-

“1. Await service. Also learned counsel for the applicant in Interim Application No. 1185 of 2023, namely, Balaji Garden Co-op. Housing Societies Federation Ltd. is permitted to serve the petitioner by private service, by all permissible modes of service. Affidavit of service be placed on record on or before the returnable date.

2. In addition to the private service, as per the order dated 7 February 2023 passed by the coordinate bench of this Court, the office to serve the petitioner through the bailiff of the local Court, as the Advocate representing the petitioner has expired, as observed in

the said order. Let the report to that effect also be placed on record.

3. Stand over to 24 April 2023 (High on Board).

4. Let the copy of this order be also served along with the private notice, as also the Court notice not to be served by the bailiff of the local Court.

5. It is clarified that if despite service, the petitioner is not represented, there would be no alternative but to pass appropriate orders including orders to dismiss the petition for want of prosecution.”

6. In pursuance of such order, affidavit of service dated 24 April, 2023 is placed on record on behalf of the interveners setting out the steps taken to search the petitioner, but the R.P.A.D. The speed post is returned with a remark ‘addressee has left’. We had also ordered service through the bailiff of the local Court. The bailiff has placed on record his report dated 21 April, 2023 setting out that the premises of the petitioner were locked and in the enquiry as made by him, it was informed that the petitioner has sold her premises to one Kacharu Sitaram Patil. Accordingly, the notice was affixed on the main door of the said premises.

7. In the circumstances, the service of notice as per law has been made on the petitioner. It appears that the petitioner was not interested to diligently pursue the present proceeding probably for the reasons as set out in the bailiff report. Thus we have no alternative, but to dismiss the petition for want of prosecution. Interim orders stand vacated. All contentions of the third parties are expressly kept open.

8. The petition as well as interim application stand disposed of in the above terms. No costs.

9. In view of disposal of the petition, civil application would not survive. It is accordingly disposed of.

[R. N. LADDHA, J.]

[G. S. KULKARNI, J.]