

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1260 OF 2023

Nirmala Prakash Sachdev

.Petitioner

Vs.

The State of Maharashtra & Anr.

.Respondents

Ms. Minal J.Chandnani a/w. Bhavesh C. Sawant i/b.Jaiwant S.Chandnani
& Associates for Petitioner.

Ms. R.M.Shinde AGP for Respondent No.1/State.

Mr. Suresh M.Kamble for Respondent No.2 & 3/Corporation.

CORAM : SUNIL B. SHUKRE AND
M. W. CHANDWANI, JJ.

DATE : 31st JANUARY, 2023

P. C.

1. Learned counsel for the petitioner prays for passing of order of status quo in respect of the construction, which is subject matter of the order dated 30/12/2022. This subject matter is, in fact, the notice dated 25/11/2022. According to the learned Counsel for the petitioner, the dispute involved in this petition is in respect of the subject property which is authorised one, as there is a completion certificate issued by the

Corporation way back on 18/4/2009.

3. We have gone through the copy of the Completion Certificate dated 18/4/2009, which refers to the construction made in the nature of parking wall on the ground floor, three rooms on the first floor and one room on the second floor. Whereas the notice has been issued in respect of the construction made of bricks having dimension of 27 x 33 sq.ft.. This construction has been stated by the corporation as unauthorised construction and appears to be carved out from the construction in respect of which Completion Certificate has been granted by the Corporation. Therefore, interim relief, as prayed by the learned counsel for the petitioner, cannot be granted.

4. Learned counsel for the petitioner also submits there is some complaint made by the neighbour alleging that the petitioner, by making subject construction, has encroached upon his property, but, when a copy of complaint was obtained by the petitioner under the Right to Information Act 2005, the petitioner found that no such allegation of encroachment by the petitioner, in the property of neighbour has been

made. Therefore, the notice dated 25/11/2022 and also order impugned herein show high-handedness on the part of the Corporation. Learned Counsel for the corporation submits that if this contention is to be considered by the Court it would be necessary for the petitioner to join the complainant as party respondent. We agree that the submission of learned counsel for the Corporation. The neighbour has not been joined as party-Respondent to this petition. Besides, relevant documents including the copy of the complaint obtained by the petition under Right to Information Act 2005, have also not been filed on record. Therefore, on the basis of submission that the corporation has used a complaint filed by the neighbor for taking action against the petitioner, no interim relief can be granted to the petitioner. The prayer made for grant of interim relief is therefore, rejected.

5. At this stage that the order impugned in this petition has already been executed and subject construction has been demolished. Copy of the Panchanama is produced before the Court by learned counsel for the corporation which is taken on record and marked *'A' for identification*. Learned counsel for petitioner doesnot dispute that the impugned order

has been executed in view of above petitioner has been rendered infructuous and is disposed of accordingly.

(M. W. CHANDWANI, J.)

(SUNIL B. SHUKRE, J.)