

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

WRIT PETITION NO. 4303 OF 2022

Polite Paradise Co-operative
Housing Society Limited
Through Secretary Rohit Phadke
having the registered office at:
Polite Paradise Co-operative Housing
Society, S. No. 19/4, Madhav Nagar,
Dhanori, Pune - 411 015.

.Petitioner

Vs.

1. Pune Municipal Corporation
Shivajinagar, Pune- 411005
Municipal Commissioner
Pune Municipal Corporation
Shivajinagar, Pune - 411 005.
2. The Executive Engineer
Building Permission Department,
Zone No. 1, Pune Municipal Corporation,
Shivajinagar, Pune - 411005.
3. The City Engineer
Pune Municipal Corporation
Shivajinagar, Pune - 411005.
4. State of Maharashtra
Government Pleader appearing
for State of Maharashtra.
5. The Deputy Superintendent of
the Land Record, Yerwada,
Government Pleader appearing
for State of Maharashtra.
6. Shri R. K. Memon
Adult, Occ- Business,
R/at: Sanjay Park, Lohegaon,
Plot No. 98, Sahara Apartment,

Pune - 411032.

7. M/s. Royal Developers
Through Shri Alpesh Patel
Kanchanganga Apartment,
Hadapsar, Pune - 411-28.

8. Shri. Atit Admolwar
License Architect
B-1, Siddhivinayak,
Hadapsar, Pune - Solapur Road,
Pune - 411013

.Respondents

Mr. A. V. Anturkar, Sr. Adv. a/w. Mr. Yatin Malwankar for the
Petitioner.

Mr. Krushna Jaybhay i/b. Mr. Abhijit P. Kulkarni for Respondent
Nos. 1 to 3 - PMC.

Ms. R. M. Shinde, AGP for Respondent Nos. 4 to 5 - State.

**CORAM : S. B. SHUKRE AND
M. W. CHANDWANI, JJ.**

DATE : 16 JANUARY 2023

ORAL JUDGMENT (PER :- S. B. SHUKRE, J)

. Heard learned counsel for Petitioner, learned counsel
for the Corporation and learned AGP for the State. There is no
need to hear Respondent No. 6, as relief sought in the Petition is
against the Corporation and the Officers of the State
Government.

2. Rule. Rule is made returnable forthwith with the consent of the parties and the Petition is taken up for final disposal.

3. The Corporation has by the impugned communication cancelled the development permission granted to the Petitioner on the basis of the measurement map prepared by the revenue authorities and submitted by the Petitioner. It is well settled law that whenever boundary dispute is raised, it is for the Civil Court to adjudicate upon the same and this is also the view taken by a Coordinate Bench of this Court in the case of **Vasant Nandram Kale v. Pune Municipal Corporation and Others** in Writ Petition No. 8168 of 2010 decided on 23rd April 2019, which view has been followed by a Coordinate Bench of this Court (on 16th September, 2019) while admitting this Petition for final hearing in Writ Petition (L) No. 23929 of 2019 in the case of **Royal Developers v. the State of Maharashtra and Others** challenging the identical communication/order which has been challenged in this Petition. This Court, in paragraph 4 of the said case, has observed as follows:

“4. To our mind, when there was a clear boundary dispute or an objection was raised to the measurement of the land carried out

by the Revenue Authorities and a map prepared by them, such issues are out of the purview of the limited powers vesting in the Municipal Corporation. The Municipal Corporation cannot substitute itself as a Civil Court nor can the Executive Engineer, Building Development Department Zone No. 1, Pune Municipal Corporation act as a presiding officer of a Civil Court and cancel or recall the building permission. Such disputes have to be taken to and settled through the intervention of a Court. The aggrieved respondents before us, and particularly the objectors/complainants, could not have approached the Municipal Corporation raising such grievance. They should have approached the competent Civil Court and established their right, title and interest in the immovable property and then sought a restraint against the petitioners developing their property after establishing that there is an encroachment on these Respondents' property by the petitioners herein. No such attempt was made, and yet the Municipal Corporation obliged these objectors/complainants."

4. There is no reason for us to take any different view because law in such matters is well settled. The boundary dispute has to be adjudicated upon by Civil Court of competent jurisdiction and that being so, the Corporation was not right in cancelling the development permission merely on the basis of the complaint received from Respondent No.6 who has taken objection about the correctness of boundaries on the basis of the measurement map. We, therefore, find that the impugned order passed by the Corporation is illegal and deserves to be quashed and set aside.

5. There is one more order passed on 17th May, 2017, which has been questioned for its legality or otherwise by the Petitioner. This order has been passed by the Deputy Superintendent Land Record, Yerwada, Pune-Respondent No.5. It states that the measurement map prepared by Respondent No.5 should be treated as cancelled. The basis for such order is the boundary dispute raised by Respondent No.6. Only because there is a boundary dispute raised by some party, the measurement map prepared by revenue department cannot be cancelled and the revenue authority is required to relegate the parties to whatever Civil remedies they may have in law. In this case, it was the duty of Respondent No.5 to leave the matter for its appropriate adjudication to the Civil Court and Respondent No.5 should not have taken upon himself the power of the Civil Court by accepting the objection raised by Respondent No.6 and treating the measurement map already prepared by him as cancelled. This order is, therefore illegal. It has been passed in usurpation of the power of the Civil Court and is against the law laid down by this Court in the case of Vasant Nandram Kale (Supra). Such an order, therefore, cannot be upheld by this Court.

6. In the result, the Petition is allowed on the following directions:

ORDER

- i. Both the impugned orders are hereby quashed and set aside.
- ii. Respondent No. 6 shall have liberty to question the measurement map by filing a Civil Suit, if he desires to do so, in which case all questions of law and facts would remain open for debate.

7. Rule is made absolute in above terms.

8. The Petition is disposed of in the above terms.

Digitally
signed by
GANESH
SUBHASH
LOKHANDE
Date:
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(M. W. CHANDWANI, J.)

(S. B. SHUKRE, J.)