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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7909 OF 2023

Ayubali Ibrahim Khanbande & Anr ...Petitioners
Versus
The Municipal Commissioner Thane Municipal Corporation & Anr ...Respondents

Mr MG Ansari, for the Petitioner.
Mr Mandar Limaye, for Respondents Nos. 1 & 2.
Mr Sandeep R Mishra, for Respondents No. 4 & 5.

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 21st August 2023

PC:-

1. The Writ Petition is thoroughly misconceived. There was an order of a Division Bench (AA Sayyed J, as he then was, and SG Dige J) of 16th November 2021. That order was passed in Writ Petition No. 3891 of 2021. The Petitioner in that Petition was the Petitioner before us. He sought a direction against the Thane Municipal Corporation (“TMC”) to pull down an illegal building being constructed beside the Jama Masjid on the Old Mumbai Pune Road, Kalwa Naka, Kalwa (West), Thane 400 065. Mr Limaye appeared for the Thane Municipal Corporation then, as he does now. He told the Division Bench that the TMC had already issued

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notices to stop work and for demolition to one Abdul Majid Bharmar.

2. The Court accepted Mr Limaye's statement that the TMC would carry these notices for stop work and demolition to their logical conclusion by passing appropriate orders expeditiously after hearing all concerned. The Bench was informed that flat purchasers of the building under construction had filed regularisation applications. The Court allowed this to be placed before the TMC at the time of filing replies to the notices. The Petition was disposed of on this basis but with the additional direction that the Petitioner could appear before the designated officer of the TMC.

3. Today Mr Limaye points out that in fact the TMC did carry those notices to their respective logical conclusions. These resulted in an order of 14th January 2022 to demolish and pull down a building called Nisha Apartments on the basis that it was illegal. What has happened thereafter is that Respondents Nos. 4 and 5, Mr Zuber Abdul Aziz Cheulkar and Mrs Zainab Abdul Aziz Cheulkar, have filed a Civil Suit No. 449 of 2022 in the Court of the Civil Judge Senior Division, Thane. That Suit is pending. The present Petitioner is a defendant to that Suit. In that Civil Suit, the Cheulkars have assailed the same TMC order of 14th January 2022.

4. The two reliefs sought in the present Writ Petition at page 24 or being prayers clauses (a) and (b) read thus:

“(a) this Hon'ble Court may kindly be pleased to issue Writ of Mandamus or any other appropriate Writ, direction or Order in the nature of Mandamus under Article 226 of

the Constitution of India directing and Ordering the Respondent No. 1 and 2 to execute and implement Order dated 14th January 2022 passed by Respondent No. 2 being Exhibit “D” herein and forthwith demolish and pull down the illegal building “Nisha Apartment” under construction beside Jama Masjid, Old Mumbai Pune Road, Kalwa Naka, Kalwa (West) Thane 400605, within the limits of Thane Municipal Corporation;

(b) this Hon’ble Court may kindly be pleased to issue Writ of Mandamus or any other appropriate Writ, direction or Order in the nature of Mandamus under Article 226 of the Constitution of India directing and Ordering the Respondent No. 1 and 2 to forthwith restrain construction of unauthorised building “Nisha Apartment” situated at beside Jama Masjid, Old Mumbai Pune Road, Kalwa Naka, Kalwa (West) Thane 400605, within the limits of Thane Municipal Corporation;”

5. It is self-evident that granting the Petitioner any form of relief in terms of prayer clauses (a) and (b) or even an interim relief will adversely affect, prejudice and in fact render infructuous the Civil Suit filed by the Cheulkars. It is always open to the Petitioner, as a defendant to that Suit, to seek a dismissal of that Suit on any of the grounds that are available to the Petitioner in accordance with law. It is also open to the Petitioner to point out to the District Court why no interim reliefs should be granted, or if granted should be vacated or not continued. But we do not see how once that Suit has been filed in 2022, this Writ Petition can be filed on 5th May 2023 seeking an implementation of the very order that is the subject matter of that Civil Suit.

6. The Petition is rejected. There will be no orders as to costs.
7. All contentions before the District Court are specifically kept open.

(Kamal Khata, J)

(G. S. Patel, J)