

Talwalkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 165 OF 2023

Vijay Apartment Phase III Co-op Hsg Ltd Thr its Secretary
Versus
The Thane Municipal Corporation & Anr

...Petitioner
...Respondents

Mr Prnil Sonawane, *with Varsha Gangawane & Ruchi Rajput i/b Vinod Utekar for the Petitioner.*
Mr Ajit R Pitale, *for Respondent No.1.*
Mr Atul Damle, **Senior Advocate**, *with Suraj Naik i/b RD Suryawanshi, for Respondent No. 2.*

**CORAM G.S. Patel &
 Kamal Khata, JJ.**
DATED: 6th September 2023

PC:-

1. Heard. In our view the Petition must be rejected. Prayer clause (a) at page 6 reads as follows:

“a. Writ of Mandamus and any other appropriate Writ in the nature of Mandamus, Order or Direction, directing the Respondents to demolish the unauthorized structures constructed on the garden of the petitioner society which unauthorized structures are directed to be demolish by order dated 29.03.2008 passed by officer of Respondent Exhibit A hereto;”

2. There is self-evidently a question of an unexplained delay of 14 years in bringing this Writ Petition. That is sufficient ground to reject the Petition. But there is more. One Ashok Harischandra Chaudhary has been joined by amendment as Respondent No. 2. He claims to own the structure that is the subject matter of the 2008 notice sought to be enforced in prayer clause (a). Mr Damle appears for Chaudhary. He tenders an Affidavit in Reply. It is to be filed in the Registry. Apart from pointing out the 14-year delay, the Affidavit accepts in paragraph 6 that there was indeed a notice of 29th March 2008 issued by the Thane Municipal Corporation (“TMC”) under Section 260 of the Maharashtra Municipal Corporations Act, 1949. Chaudhary filed a Special Civil Suit No. 374 of 2008 before the Civil Judge Senior Division, Thane challenging that order, the very order that this Petition now seeks to enforce. Chaudhary obtained a temporary injunction on 12th May 2008. That Special Civil Suit was later renumbered as Regular Civil Suit No. 1126 of 2012. The TMC filed an undertaking on 20th November 2013 saying that it would follow the due process of law and the guidelines laid down by this Court in another matter. In view of that statement the Regular Civil Suit was disposed of accepting the undertaking filed by the TMC.

3. The Society now claims enforcement of the very same notice of 2008. We do not see how that is possible.

4. Finally, there is a very serious dispute about the Petitioner Society’s claim to ownership of the land in question. Mr Damle asserts that Chaudhary is a co-owner of the land and that the Petitioner Society has no right, title or interest of whatsoever nature

over Chaudhary's land the structures on which are the subject matter of the 2008 notice.

5. We cannot get into that controversy nor address its merits for the simple reason that a disputed question of title is strictly speaking the remit of a civil court of competent jurisdiction.

6. For these reasons, we decline relief and dispose of the Writ Petition. It is open to the Petitioner Society to adopt appropriate proceedings in a court of competent civil jurisdiction. These will be addressed on merits. All contentions are expressly left open. However, we clarify that if hereafter the Society seeks any reliefs in respect of this land, now that Chaudhary has been joined to this Petition, the Society will necessarily join Chaudhary as a Defendant to any such civil proceedings.

(Kamal Khata, J)

(G. S. Patel, J)