

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 3380 OF 2015
IN
WRIT PETITION NO. 10075 OF 2013

Jagdish Shivanand Wagh ...Applicant

Versus

Kalyan Dombivali Municipal Corporation ...Respondents
through its Ward Officer, F Ward & Anr

None for the Applicant.

Mr Rajat Dighe, i/b AS Rao, for Respondent No. 1.

Ms Molina Thakur, AGP, for the Respondent-State.

**CORAM G.S. Patel &
Kamal Khata, JJ.**

DATED: 25th August 2023

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1. The Civil Application is listed today because on 28th July 2023 when it was listed as per the then roster of Sunil B Shukre and Rajesh S Patil JJ, none appeared for the Applicant. To give him a final opportunity it was directed to be listed today. None appears for the Applicant today also.

2. A simpliciter order of dismissal would ordinarily have sufficed. But it would not lend the necessary colour and piquancy that we are able to discern.

3. The Applicant, Jagdish Shivanand Wagh, was originally the 2nd Petitioner. The 1st Petitioner was one Yeshwant Dattatraya Chougule, now the 2nd Respondent, to the Civil Application. They filed a Writ Petition against the Kalyan Dombivali Municipal Corporation (“**KDMC**”).

4. Chougule was said to be the owner of some land in Dombivali. Wagh, on his own showing, was appointed by Chougule to develop the land under a registered development agreement. Therefore, Wagh did not have ownership rights to the land but at best was appointed as a developer.

5. Writ Petition No. 10075 of 2017 filed by Chougule as the 1st Petitioner and Wagh as the 2nd Petitioner assailing an order of the KDMC directing demolition of the entire building constructed on Chougule’s land.

6. There was an ad-interim protective order in the Writ Petition. . It seems that on 23rd December 2015 KDMC officers came to the site. According to Wagh it is at that time he was shown an order of this Court of 29th September 2015 in the Writ Petition.

7. We have the papers of the Writ Petition before us.

8. The order of 29th September 2015 was made on a mentioning. This is clear because the order copy indicates with the suffix *P1* that the matter was allowed to be produced and was on the production board. The Bench of AS Oka J (as he then was) and VL Achliya J, passed the following order:

- “1. Not on board. Taken on board
2. Learned Counsel for the Petitioners on instructions seeks permission to withdraw the Petition. Petition is disposed of as withdrawn.”

9. Now Wagh says in the Civil Application that he ‘never gave’ Chougule the ‘authority’ to instruct the Advocates to withdraw the Petition. But what the Civil Application seems to overlook is that Chougule was and is the owner and Wagh was only a developer. In fact, paragraph 9 of the Interim Application says curiously that Chougule is the owner of the land but withdrew the Petition with ‘ulterior’ motives.

10. We have no hesitation in concluding that this Civil Application, apart from deserving to be dismissed for repeated default, is thoroughly without merit and is quite conceivably an abuse of the process of this Court. Effectively, Wagh has sought to now set out on his own and part ways with the owner of the plot, Chougule. We do not see what right Wagh possibly has. We do not see how he can possibly sustain the Petition on his own. It is difficult to see how a developer can pursue a Petition where the case of the KDMC is that the entire structure (presumably constructed by Wagh) is illegal.

11. The Civil Application is dismissed. No costs.

(Kamal Khata, J)

(G. S. Patel, J)