

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1845 OF 2021

Lawoo Vithal Narvekar ... Petitioner
Versus
The State of Maharashtra & Ors. ... Respondents

Mr. Krantishinh Gadade i/b. Mr. Sumit Kate, for the Petitioner.
Mr. Kedar Dighe, AGP for the State.
Mr. Kunal Waghmare, for the MCGM.
Later on Mr. Warunjikar, a/w Mr. Krantishinh Gadade i/b. Mr. Sumit Kate
Advocate for the Petitioner present.

CORAM: G. S. KULKARNI &
R. N. LADDHA, JJ.

DATED: MARCH 13, 2023

PC.

1. We have heard learned Counsel for the petitioner. The petition has
been filed praying for the following reliefs:-

- “a) That this Honourable Court be pleased to call for the record of the demolition conducted by the respondent No.4 on 9/12/2020 and 20/1/2021 without giving any notice to the present Petitioner and after satisfying about the legality, validity and propriety thereof be pleased to direct the respondent No.4 to restore the structure of the present petitioner by issuing a writ, order or direction under Article 226 of the Constitution of India, 1950.
- b) This Honourable Court be pleased to direct the respondent no.2 to initiate appropriate legal action and/or inquiry against the respondent No.4 as per Condition No.20 of the NOC issued under section 33 (12)(A) of DCPR 2034 in respect of NOC granted to the contravening structures by submitting the fraudulent documents with the respondent No.3.
- c) This Honourable Court be pleased to direct the respondent No.1

and 2 to conduct an inquiry of the scam carried out by the respondent no.4 for gaining the FSI from the respondent no.2 for the reason mentioned in the memo of the petition.

d) during the pendency of this petition, be pleased to stay the redevelopment activity carried out by the respondent No.4 on the final plot no.751-752, TPS-IV of the Mahim Division next to Chandrakant Dhuru Wadi, College Lane, Veer Sarvarkar Marg, Dadar (West), Mumbai-400028.

d) Ad-interim relief in terms of prayer clauses (d).

e) Cost be provided for.

f) Any other relief deemed fit and proper may please be granted in favour of the petitioner herein.”

2. From the averments as made in the petition, it clearly appears that there are inter-se disputes between the petitioner and his brother. The averments in that regard can be seen from ground (vi) in the petition. It is also not in dispute that the structure itself was demolished in the year 2020.

3. In the above circumstances, it may not be possible for this Court to grant any reliefs as prayed for. The petition is accordingly disposed of with liberty to the petitioner to take recourse to appropriate remedy as may be available in law. If such recourse is taken, all contentions of the parties in that regard are expressly kept open.

4. Disposed of in the above terms. No costs.

LATER ON

5. After we have passed the above order Mr. Warunjikar learned counsel for the petitioner has mentioned the proceeding. He would

submit that the petitioner be not relegated to file a civil suit, even when the prayers in the petition are in regard to the restoration of the structure, which according to the petitioner has been demolished by the Municipal Corporation without following due process of law. This itself is seriously disputed by the Municipal Corporation. In regard to demolition of the structure as to whether it was demolished by respondent No.4 or by the BMC, itself is an issue of dispute, which cannot be resolved in the present proceeding being a disputed question of fact. Considering these circumstances we are not inclined to change our mind to vary the orders passed by us in the morning session. The petition accordingly stands disposed of in the terms of our above order.

6. All contentions of the parties are expressly kept open.

7. At this stage Mr. Warunjikar submits that the petitioner was pursuing the present proceeding bonafide. If the petitioner intends to file a civil suit within 10 days from today, the petitioner would be entitled to take benefit of the period spent in pursuing the present proceeding, if any issue on limitation arises, before the Civil Court.

(R. N. LADDHA, J.)

(G. S. KULKARNI, J.)