

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2469 OF 2024

Marigold Phase III Cooperative Housing Society ...Petitioners
 Ltd & Anr
Versus
 Pune Municipal Corporation & Ors ...Respondents

Mr Atul Daga, with Ayaz Bilawala, Yogesh A Gaikwad & Rehaan
Engineer, i/b M/s Bilawala & Co, for the Petitioners.
Mr RM Pethe, for Respondents Nos. 1 to 5.
Mr Sourasubha Ghosh, with Samarth Chowdhary, i/b M/s.
IndusLaw, for Respondents Nos. 6 and 7.
Mr Murtaza Chherawala, with Shon Gadgil, Mihika Awate & Neeraj
Salodkar, i/b M/s. CNS Juris, for Respondents Nos. 8 and 9.

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CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 4th April 2024

PC:-

1. We are sorry to say that this is yet another attempt to abuse our writ jurisdiction to resolve what are entirely private disputes. This one is about a plot of land within the jurisdiction limits of the Pune Municipal Corporation (“**PMC**”) at Kalyani Nagar, Wadgaon Sheri, Taluka Haveli, District Pune. The Petitioner is a society called the Phase III society of Marigold. The 1st Respondent is the PMC. The 6th Respondent is a developer. The 7th Respondent is a

director of the developer. The 8th and 9th Respondents are two other societies.

2. On 7th March 2024, we asked the learned Advocate for the PMC to file an Affidavit with a report and a sketch plan indicating the relative structures because the Petitioner's complaint that a boundary wall, watchman cabin and other structures had been put up in a manner and at a location that affected the Petitioner's claimed right, or at least touching the boundaries of the Petitioner's plot.

3. That Affidavit in Reply is filed and served. Page 60 shows us the relative locations. Plot No. 4 has been divided into two, plot 4/1 and plot 4/2. The Petitioners are concerned with plot 4/2, a building called Ivy Glen. The Petitioner society is admittedly the owner of plot 4/2. It claims to be concerned with plot 4/1. But the buildings and societies that are on plot 4/1 do not seem to share these concerns or at least not that we can tell because they have not joined as fellow petitioners and do not seem to support the Petitioner.

4. The entire Petition is directed against the developer and his directors. These have put up a rather splendid accommodation on plot 5. There is a bungalow. It has a swimming pool. There is a solar system. There is a security cabinet. There is a parking provision, servants' room and a toilet.

5. Then, entirely on plot 4/1 there is a curved wall, and we are now told that the Petitioner's rights are affected on plot 4/2 because this wall "touches" the boundary of plot 4/2.

6. On behalf of the PMC, the Affidavit files tells us that the owner of Plot No. 5 may indeed have made constructions that may not have the necessary permission. This will not give the Petitioner the right to demand demolition. This is because it is also stated on behalf of the PMC that there is no FSI violation, and it is possible to grant an appropriate application for retention or regularisation.

7. What this therefore tells us is that this is clearly a private vendetta between the Petitioner and the developer company and its director. Not only that, but we learn that there is in fact a Civil Suit filed. Obviously, the intent of this Writ Petitioner is to somehow leapfrog the civil suit and to obtain order that is to all intents and purposes a decree or at least a mandatory injunction in the civil suit. We refuse to allow our Writ Jurisdiction to be utilised like this.

8. The Petitioner has no locus. The structures that the Petitioner complains of are not on the plot of land or in the building occupied by the Petitioner. Further it is pointed out that all the constructions by the developer/director are within boundary of Plot 5 although they may be on the boundary line itself. No part of that development is within Plot 4/1. As regards the wall on Plot 4/1, it is notable that nobody from Plot 4/1 has complained about it. We are told that wall exists on site but it is not shown on the plan. The PMC is the sole authority to decide what action, if any, is to be taken

(including regularisation in accordance with law). This does not give the Petitioner the rights to seek a demolition of the wall. We also notice that on the other side of the wall there appear to be certain row houses or other structures. Whether that wall was necessary or required is a separate matter.

9. It is not possible for the Petitioner to merely rope in other plot holders or occupants by making them Respondents and then claiming that the Petition is concerned with other plots.

10. The Petition is entirely devoid of merits. It is rejected.

(Kamal Khata, J)

(G. S. Patel, J)