

Vinaa Khadpe
(P.S.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.724 OF 2024

Ambernath Sahakari Samudayik Shetki Society
Ltd. and ors

.. Petitioners

Versus

The State of Maharashtra and ors

.. Respondents

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- Mr. Vishal Kanade, Advocate i/b. Mr. Rupesh Lanjekar, Advocate of for the Petitioners.
- Mr. P. G. Sawant, AGP for the Respondent Nos.1 to 3 – State.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 18, 2024

P.C.:

1. Not on Board. Mentioned. Taken on Board. This Writ Petition was mentioned yesterday at 2.30 p.m. before me due to urgency expressed by Petitioners.

2. Heard Mr. Kanade, learned Advocate for the Petitioners and Mr. P. G. Sawant, learned AGP for Respondent Nos.1 to 3 – State.

3. At the outset, Mr. Sawant, learned AGP appearing for the State has drawn my attention to the Notice dated 21 January 2024 which at exhibit M – page 109 to the Petition and raised a preliminary objection. Learned AGP would submit that considering that this is a statutory notice issued under Section 50(3) of the Maharashtra Land Revenue Code, 1966, any challenge maintainable thereto in view of the Appellate Side Rules, 1960 shall lie before the Division Bench and

not before the Single Judge.

4. Mr. Kanade, learned Advocate appearing for Petitioners in reply would submit that the said Notice, if read, would reveal that it is in the nature of an order, *inter alia*, directing demolition of the subject structure of the Petitioners. He would submit that under the Appellate Sides Rules, 1960, such a communication / order though may be nomenclatured as a notice but in effect it is an order and would be maintainable before the Single Judge.

5. Both the learned Advocates would refer to and rely upon Rule 18 of Chapter XVII of the Appellate Sides Rules, 1960 in this regard.

6. Registry is directed to examine the nature / relief prayed for in this Writ Petition which was mentioned before this Court yesterday afternoon for seeking urgent circulation for today in view of demolition and circulation was therefore granted for tomorrow morning i.e. today. Registry is directed to examine and ascertain whether this Petition pertains to the Division Bench or the Single Judge. Registry to submit its report immediately and place the matter before the appropriate Bench in view of the demolition squad already at the site as informed by the learned AGP.

7. For a period of two days i.e. today and tomorrow, in order to enable the Petitioners to move the appropriate bench for ad-interim

relief, the impugned demolition is stayed. Copy of this order shall be placed before the Registry immediately by the parties. It is made clear that in view of the above, direction for demolition stated in the impugned Notice is stayed, for the next two days and *status quo* shall be maintained by the parties for the next two days.

8. All contentions of both parties are expressly kept open.

9. I have been informed that the regular assignment of the present Writ Petition was before the Bench (Coram : Amit Borkar,J) and accordingly the matter was moved on 17 January 2024 before the said Bench when “Not before me” order was passed, which is shown to me today.

10. By way of submission, Mr. Kanade has drawn my attention to page No.97 to the Petition which is the order of the Division Bench passed in Civil Application No.5 of 2011 in Letters Patent Appeal No.10 of 2011, *inter alia*, protecting the subject suit property which is the subject matter of this Writ Petition. Hence, he would submit that allotment of this property to any other third party for any other purpose is prohibited by that order as at present. I have perused the said order. Learned AGP shall take instructions on the same.

11. Mr. Deepak Vijay Mare, Nayab Tahashildar, Ambernath who is the officer of the Respondent -State is present in Court and he has been informed by the Court at 11.37 am today morning when this

order is dictated, to convey the message to the demolition squad present at the site about the *status quo* order that is passed by this Court.

12. Registry to place the Writ Petition before the appropriate Bench tomorrow.

13. Liberty to apply.

Vinaa Khadpe

[MILIND N. JADHAV, J.]

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Date: 2024.01.18
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