



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

WRIT PETITION NO. 304 OF 2019

Dr. Kishore s/o Moreshwar Pimparkar,
aged about 58 years, Occ. Service,
Swammi, State Bank of India Colony No.1,
Jatharpeth, Akola.

...PETITIONER

Versus

- 1] Akola Municipal Corporation,
through its Municipal Commissioner,
Akola Municipal Corporation, Akola.
- 2] Shri Bhalchandra Govind Mahashabde,
aged about 50 years, Occ. Builder,
B.G. Construction & Developers,
having its construction site SBI Colony No.1,
Jatharpeth, Akola.

...RESPONDENTS

Shri A.R. Deshpande, Counsel for the petitioner.
Shri Amol Deshpande, Counsel for respondent no.1.
Shri U.J. Deshpande, Counsel for respondent no.2.

CORAM : ANIL L. PANSARE, J.

DATE : JUNE 10, 2024

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally
by consent of the learned Counsel for the parties.

- 2] The challenge is to order dated 30/10/2018 passed
below Exh. 65 by the learned 6th Joint Civil Judge Senior

Division, Akola, in Regular Civil Suit No. 907/2012.

3] The petitioner – original plaintiff has filed suit against the respondents – original defendants seeking mandatory injunction directing respondent no.1 to demolish the alleged illegal construction carried out by respondent no.2. According to the plaintiff, respondent no.2 – Builder and Developer has constructed a flat scheme, which is not in accordance with the construction norms. One of the violations is the requisite margin has been not left. In other words, additional construction has been allegedly made. According to the petitioner, respondent no.1 – Corporation has supported the stand taken by the petitioner. The learned Counsel for respondent no.2 admits such status.

4] The petitioner came to know that pending suit, respondent no.2 has sold flats to various persons. The petitioner was of the view that if his prayer in the suit is allowed, the disputed construction will be demolished, which will affect the rights of the purchasers. Accordingly, he moved

an application (Exh. 65) calling upon respondent no.2 to furnish the names of the purchasers. The learned trial Court has rejected the application on the ground that it is the duty of the purchasers to verify documents before purchasing a flat and, thus, they will be responsible for all the consequences that would follow, if they were not diligent.

5] To my mind, the trial Court committed error in not taking a pragmatic view in the matter. The Court expects the purchasers to know the niceties of rules of construction and to go in depth as regards the documents on the point of legitimacy of construction. A purchaser usually does not go into such details particularly as the necessity of margin to be left while constructing a flat scheme. In any case, the learned Counsel for the petitioner is correct in contending that if a suit is to be decreed, the sufferer will be the purchasers, who should be given opportunity of hearing before passing any order of demolition.

6] The learned Counsel for respondent no.2 has opposed the petition on the ground that there is no provision in

law to file application as filed by the petitioner - plaintiff. He, however, could not show any bar to file such application as well. The procedural law may not provide for each contingency that would arise pending suit. The trial Court is empowered to entertain such application and issue such directions as necessary to have effective and proper adjudication of the suit. In that view of the matter, the trial Court has committed error by not allowing the application. The order impugned is therefore unsustainable and is liable to be quashed and set aside.

7] The order impugned is accordingly quashed and set aside. The application (Exh. 65) is allowed. Respondent no.2 is directed to furnish details of flat purchasers to the petitioner within one month from today.

8] Rule is made absolute in the aforesaid terms with no order as to costs.

JUDGE

Sumit