



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7404 OF 2024

Yashwant Anna Bhoir

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Mr. Avinash Fatangare a/w Ms. A. Shelar for Petitioner.

Mr. Y. D. Patil, AGP a.w Ms. M. P. Thakur AGP for Respondent Nos.1 to 3 State.

Mr. Vijay Killedar for Respondent No.5.

Mr. Dinesh Adsule for Respondent No.4.

CORAM: G. S. KULKARNI &
ARIF S. DOCTOR, JJ.

DATE: 13 JUNE 2025

P.C.

1. We have heard learned counsel for the parties.
2. The case of the petitioner is of a nuisance created by sewage water which has been drained in the petitioner's adjoining land from the construction undertaken by respondent No.5 - "A Plus Lifespace", which is now stated to be a building, where a Cooperative Society is formed, namely, the respondent No.6 - Trishul Golden Ville CHS.
3. The petitioner contends that respondent No.5 has failed to provide any drainage/sewage and has left the same flowing on the land belonging to the petitioner. It is petitioner's grievance that even respondent No.4 - The Chief

Officer, Kulgaon, Badlapur Municipal Corporation also has illegally issued an Occupation Certificate without verifying such basic compliances. It is also the petitioner's case that the impugned action on the part of these respondents has infringed the petitioner's valuable rights to property as conferred by the Constitution under Article 300A as also the petitioner's fundamental rights under Article 14 and 21.

4. Today, Mr. Killedar, learned counsel for respondent No.5 submits that the Municipal Council has undertaken construction of a sewerage line, hence, there ought not to be any grievance from the petitioner. In supporting such contentions, he has drawn our attention to some photographs. However, from these photographs as relied by Mr. Killedar, we do not find that there is a full-fledge sewerage mechanism in operation. Also, it would not be a lawful discharge of its obligations by respondent No.4 that without verifying the completion of the building in all respects of which sewerage is an important part to grant Occupation Certificate to the building in question. In such context, we may usefully refer to the decision of the Supreme Court in the case of **Supertech Ltd. Vs. Emerald Court Owner Resident Welfare Association & Ors**¹. in regard to the commencement to completion of the process of construction and the importance of sewerage the following observations as made by the Supreme Court need to be noted:

"160. From commencement to completion, the process of construction by developers is regulated within the framework of law. The regulatory

¹ (2021) 10 SCC 1

framework encompasses all stages of construction, including allocation of land, sanctioning of the plan for construction, regulation of the structural integrity of the structures under construction, obtaining clearances from different departments (fire, garden, sewage, etc.), and the issuance of occupation and completion certificates. While the availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations — the protection of the environment and the well-being and safety of those who occupy these constructions. The regulation of the entire process is intended to ensure that constructions which will have a severe negative environmental impact are not sanctioned. Hence, when these regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards.”

(emphasis supplied)

5. In the aforesaid circumstances, we are of the clear opinion that the present status at the site is required to be placed before the Court. It is therefore appropriate that an independent Architect/Engineer well versed on such issues is required to be appointed who would visit the site and make a report verifying the availability of any sewerage line in respect of the building as constructed by respondent No.5 and presently stated to be belonging to respondent No.6. Such expert would also visit the adjoining land of the petitioner's to examine as to its status in the light of the petitioner's complaint, and whether any sewerage is drained from the building of respondent No.6 on the petitioner's land and make an appropriate report along with photographs to this Court.

6. Accordingly we appoint **Mr. Purushottom Govind Redekar, Architect** having Address Building No.56, Room No.2570 & 2572, Gandhi Nagar,

Near MIG Club, Bandra (E), Mumbai 400051. (Contact No.9820032623 & 9920032623).

7. The fees of the Architect/Engineer shall be borne by the respondent Nos. 4, 5 & 6 in equal proportion.

8. Initially, let an amount of Rs. 40,000/- be deposited in this Court by respondent No.5 on or before 17 June 2025 who shall be entitled to proportionate reimbursement from the respondent Nos.4 & 6.

9. The Architect as appointed shall visit the site in between 18 to 20 June 2025 as may be convenient to him, of which a 48 hrs. advance notice be issued to the advocate for the parties.

10. Let a report of the Architect be placed on record on or before the adjourned date of hearing.

11. Stand over to **23 June 2025 (HOB)**.

12. Parties to act on authenticated copy of this Order.

(ARIF S. DOCTOR, J.)

(G. S. KULKARNI, J.)