

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8774 OF 2013

Bhushan Padmakar Nabar	...	Petitioner
V/s.		
The State of Maharashtra & Ors.	...	Respondents

Mr. D. S. Patil for Petitioner.
Mr. P. P. Kakade, AGP for State.
Mr. R. D. Rane for Respondent Nos. 4 to 6.
Mr. Pavan Patil for Respondent Nos. 10, 11 and 19.
Mr. Rakesh Singh i/b. M. V. Kini & Co. for Respondent No. 8.
Mr. D. S. Sakhalkar i/b. Mr. Swapnil A. Waradkar for Respondent No. 13.
Mr. A. S. Khandeparkar i/b. Khandeparkar & Associates for Respondent Nos. 14 and 14(i).
Mr. U. R. Mishra with Mr. H. R. Prajapati with Mr. Upendra Lokegaonkar for UOI - Respondent No. 16.

**CORAM : NARESH H. PATIL AND
M. S. SONAK, JJ.**

15th December, 2015.

P.C.

The petitioner who claims to be a resident of Maitree Park, situated at Tal: Kudal, Dist: Sindhudurg, filed the present petition in the year 2013 seeking various directions including restraining running of Radiology Centre conducted by the respondent no. 14 in the building known as Maitree Park, Abhinavnagar No. 1, Post : Kudal, Dist : Sindhudurg. The petitioner seeks direction to respondent nos. 4 and 5 to remove

unauthorised and illegal construction carried by the respondent nos. 13, 14 and 17.

2] Learned counsel appearing for the petitioner submits that the third floor of the said building was constructed without obtaining permission by the builder / developer, respondent no. 13. On the ground floor the respondent no. 14 is running a Radiology Centre illegally without obtaining permission from the various statutory authorities and bodies. The petitioner questions the facilities provided to the Radiology Centre by the authorities like electricity department, local authorities providing water connection etc. The learned counsel submits that not only the third floor is to be demolished but the Radiology Centre which is causing lot of nuisance to the residents of the same building is required to be closed down. The learned counsel submits that various issues concerning the subject matter were raised before the authorities concerned but none of the authorities paid any heed to the grievance. Hence the petitioner has approached this Court.

3] Learned counsel appearing for the Zilla Parishad submits that by a Notification dated 10th August 2015, the State Government in exercise of powers conferred by clause (i) of sub-section (2) of section 340 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965 (Mah. XL of 1965) (hereinafter referred to as 'said Act') appointed the Tahsildar of Taluka Kudal, District Sindhudurg as an Administrator of the newly constituted Nagar Panchayat, till the said Nagar Panchayat is duly constituted in accordance with the provisions of the said Act. The learned counsel appearing for Zilla Parishad submits

that necessary papers in connection with the subject matter have been forwarded to the Tahsildar, the Administrator for the Kudal Nagar Panchayat. The learned counsel submits that the concerned authority would look into the matter.

4] Learned counsel appearing for the developer/ builder, respondent no. 13 submits that he had attempted to file an application for regularization of construction carried out on third floor of the building but the authorities informed him that as the present petition is pending before this Court, no such application could be accepted and taken into consideration. Learned counsel submits that the developer would be filing appropriate application for regularization of the construction in accordance with law. Learned counsel submits that sufficient FSI is available for the developer to file such an application for regularization. Learned counsel submits that the ground floor on which the Radiology Centre is run as a commercial premises has been sold and let out by the developer in favour of the respondent no. 14.

5] Learned counsel appearing for the respondent no. 14, Radiology Centre submits that the Radiology Centre is catering to the needs of rural population. There is hardly any Radiology Centre surrounding the area which is an accident prone area. Considering the need of the patients, few professionals decided to start a Radiology Centre. Directing closure of the Centre would be detrimental to the public interest. Learned counsel submits that in case deficiencies are pointed out by the authorities, the respondents would make every attempt to remove the same by resorting to appropriate procedure, as established by law.

6] Learned AGP submits that appropriate orders be passed in the light of the facts and circumstances of this case.

7] Learned counsel appearing for the Electricity Board submitted that on the basis of NOC granted by the Kudal Village Panchayat (as it then was) electricity connection was provided to the said Radiology Centre. According to the counsel, the Board does not look in to the validity of the title, possession and other intricacies of valid or invalid permission in respect of the subject construction. Learned counsel submits that the board would be bound by the orders passed by the appropriate planning authorities in this connection.

8] Since last two years, the petition is pending on this very controversy. From the nature of the allegations made, replies filed, issues emerging from the petition it could be gathered that several questions of fact arise out of the subject petition for consideration of this Court like:

- (i) Whether the construction carried out on third floor was legal or illegal?
- (ii) Whether the ground floor area was sale-able?
- (iii) Whether the builder developer obtained necessary permission from the appropriate authorities for carrying on construction on third floor and for selling or letting out ground floor for Radiology Centre?
- (iv) Whether the builder developer under the available provisions of law would be entitled to file application for regularization of the said construction.

(v) Which of the planning authority is responsible for taking final decision whether Zilla Parishad or Gram Panchayat or Nagar Panchayat?

9] All these issues require inquiry, investigation, necessary hearing to the parties and scrutiny of record.

10] Learned counsel appearing for the Zilla Parishad has submitted that Kudal Village Panchayat has now been converted to Kudal Nagar Panchayat and the Tahsildar has been appointed as an Administrator of the newly constituted Kudal Nagar Panchayat. As per the directions of the State, necessary papers in respect of the subject matter of the construction have been forwarded to the Tahsildar and according to the counsel, Tahsildar would look into the matter.

11] In the facts, we are of the view that some opinion is required to be formed by the concerned authorities, at the earliest. The issues cannot be kept lingering for an indefinite period. It is true that civil rights of the parties are involved. The issue concerning nuisance to the residents of the building is also required to be looked into.

12] In view of the aforesaid facts, circumstances and observations made, we issue the following directions:-

(a) We direct the Tahsildar in the capacity of Administrator Kudal Nagar Panchayat to go through the entire record forwarded by the Zilla Parishad in connection with the subject building known as Maitree Park situated in Tal : Kudal, Dist : Sindhudurg;

- (b) The Administrator shall hear all the necessary parties on the subject controversies and issues raised;
- (c) The Administrator shall thereafter take final decision in respect of the issues raised as above;
- (d) The Administrator shall pass a reasoned order as Head of the Planning Authority;
- (e) The Administrator is free to exercise his powers in case if it is noticed that the minor discrepancies, errors, compliances are to be cured by the contesting parties in connection with the subject construction or the Radiology Centre.
- (f) The respondent developer if desires, is entitled to file an application for regularization of the said construction, which if filed shall be dealt with strictly in accordance with law.
- (g) The petitioner and respondent nos. 13 and 14 shall appear before the Administrator on 18th January 2016 at 11.00 a.m.
- (h) The Administrator is entitled to seek opinion from the Zilla Parishad Authorities, Town Planning Authorities, Electricity Department, Pollution Control Board before passing order.
- (i) The Administrator shall pass the final order as expeditiously as possible and preferably within six months from 18th January 2016.
- (j) All the contesting parties undertake to cooperate with the Administrator in reaching final decision.
- (k) All issues and merits are kept open. It is clarified that this Court has not expressed any opinion on the merits of the allegations and contentions raised by the petitioner and the respondents herein.

- (l) In case, the order passed by the Administrator is adverse to any of the contesting parties to the petition, the said party may resort to appropriate proceedings in respect of the said order as permissible in law.
- (m) The Registry to communicate the order to the Collector, Sindhudurg.
- (n) With aforesaid observations and directions petition is disposed of.
- (o) All parties to act on an authenticated copy of this order.

(M. S. SONAK, J.)

(NARESH H. PATIL, J.)