

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5367 OF 2015

Shri Machindra Tukaram Naik. .. Petitioner
Vs
City & Industrial Development Corporation
of Maharashtra Ltd. And Another. .. Respondents
—
Shri Anand Mishra i/by Shri Digambar R. Kawale for the Petitioner.
Shri Ashutosh M. Kulkarni for Respondent No.1.
Shri V.S. Gokhale, AGP for Respondent No.2.
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CORAM : A.S. OKA &
REVATI MOHITE DERE, JJ
DATED : 10TH JULY 2015

PC.

. Yesterday this Petition was mentioned. The said Petition was ordered to be placed on board and the same was adjourned till today.

2. The challenge in this Petition under Article 226 of the Constitution of India is to the notice dated 22nd January 2015 issued by the City and Industrial Development Corporation of Maharashtra Limited (CIDCO) under Sub-section (1) of Section 54 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”). In the Writ Petition and in particular Paragraph 8, it is contended that there was an old residential house of the Petitioner. As

the same was in dilapidated condition, the Petitioner has reconstructed the same and to accommodate the expanding family, he had carried out the additional construction to the said house. The material averments in Paragraph 8 of the Petition read thus:-

“8. However, it was constructed in the old style and had been in a dilapidated condition and hence the Petitioner reconstructed his said structure with the new structure and also to accommodate its expanding family had carried out additional construction. The Petitioners submits that, since old structure was replaced by the new structure.”

3. Thus, it is an admitted position that altogether a new structure was constructed by the Petitioner. It was contended in the Petition that though the CIDCO claims that the land was acquired, it was never acquired. In the Petition, the Petitioner has relied upon a No Objection Certificate dated 23rd July 2014 issued by the Village Panchayat of Kalamboli. The said No Objection Certificate was granted to enable a Developer to demolish his house and to construct ground plus four storeyed building. The said No Objection Certificate is not a permission for construction.

4. When this Writ Petition came up before the Vacation Bench of this Court on 20th May 2015, following order was passed:-

“1. The petitioner has challenged the Notice dated 22-1-2015, thereby directing him to demolish the illegal construction which inter alia has been mentioned as the RCC plinth which is being constructed by the petitioner. The learned counsel for the petitioner is unable to point out any of the permissions granted by any Competent Authority for the said construction. In the circumstances, there is no urgency in the matter. The prayer for ad-interim relief is rejected.

2. Place this matter on board as per the CMIS date.”

5. On 27th May 2015, the Petitioner again moved the Vacation Bench of this Court when an opportunity was granted to the Petitioner to file a separate Application. Accordingly, the Civil Application No.1908 of 2015 has been filed by the Applicant. In the said Application, the Applicant has again relied upon the said No Objection Certificate which was relied upon in the Writ Petition. We must note here that in the impugned notice, it is recorded that without obtaining permission, the Petitioner has constructed the RCC plinth. The Applicant/Petitioner specifically relied upon the so called approved Plan which was allegedly approved by the Kalamboli Village Panchayat. Except for the signatures of the Sarpanch and Gram Vikas Adhikari, there is no endorsement on the said Plan. The said Plan is for a construction of a multi-storeyed building consisting of ground plus four floors. Moreover, the said plan has been prepared on 28th June 2014.

6. The learned counsel appearing for the First Respondent CIDCO has placed on record a copy of the Notification dated 20th March 1971 by which certain area was designated as the site of the proposed town of Navi Mumbai in exercise of powers under Sub-section (1) of Section 113 of the MRTP Act. The Village Kalamboli in which the structure is situated is a part of the said Notification. Our attention is invited to a decision of the Division Bench of this Court in the case of Bima Office Premises Co-operative Society v. Kalamboli Village Panchayat, Kalamboli and Others [2001(1) Mh.L.J 806 to which a Kalamaboli Village Panchayat is a party. In paragraph 34, the Division Bench held thus:-

“34.Therefore, what is taken away by sub-section (5) is the power of respondent No.1 Gram Panchayat, or other local authority to have control on erection or re-erection of buildings. This is obviously done with the specific purpose to permit the Development Authority designated under MRTP Act to develop new town in a planned and systematic manner. Consequently, authority vested in the local authority inclusive of Municipal Council or Panchayat under the relevant provisions of the Municipal Law or local Panchayat Law, is taken away so as to permit planned development of the new towns. Therefore, effect of publication of notification under section 113 of the MRTP Act is only to take away powers of the Gram Panchayat under section 52 of the Act and nothing more.”

(Underline added)

7. Hence, the Kalamboli Village Panchayat has no power under Section 52 of the Maharashtra Village Panchayat Act, 1959 to grant any development permission or a building permission after 20th March 1971 and the same could have been granted only by the First Respondent CIDCO which is the Special Planning Authority. In paragraph 9 of the Civil Application, it is specifically contended that the building plan has been duly approved by the Village Panchayat. The so called Plan signed by the Sarpanch and Gram Vikas Adhikari is of no value as the Village Panchayat has no authority to grant permission to carry on construction.

8. Therefore, this is a case where admittedly the Petitioner does not have any permission to construct even a plinth. The Petitioner tried to rely upon the documents which are at Pages 34 and 35 of the Petition. The same have nothing to do with the grant of permission to construct the RCC plinth.

9. Hence, the action of carrying on construction of a house is completely illegal and no interference is called for in writ jurisdiction. Accordingly, the Writ Petition is rejected. Civil Application No.1908 of 2015 is also rejected.

10. The learned counsel appearing for the Petitioner seeks protection from demolition. The ad-interim relief was refused by the Vacation Bench of this Court for the reasons recorded therein. Therefore, no such indulgence can be shown to the Petitioner. The request is rejected.

(REVATI MOHITE DERE, J)

(A.S. OKA, J)