

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO.48 OF 2012

Mr. Chitarmal Mahadev Gupta. .. Petitioner
Vs
State of Maharashtra and Others. .. Respondents
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Mrs. Neeta Karnik for the Petitioner.
Shri V.B. Thadhani, AGP for the Respondent Nos.1 and 2.
Shri N.R.Bubna for the Respondent No.3.
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CORAM : A.S. OKA & C.V. BHADANG, JJ
DATED : 1st MARCH 2016

ORAL JUDGMENT : (PER A.S. OKA, J)

1. Rule. The learned AGP waives service for the first and second Respondents and the learned counsel appearing for the third Respondent waives service. Forthwith taken up for final disposal.

2. By an order dated 16th May 2007, the District Collector, Thane, addressed a letter to the Commissioner of the third Respondent Mira Bhayander Municipal Corporation stating that the area of 15 Hectares out of the Survey no.209 corresponding to new Survey No.15 at Village- Navghar was reserved for developing Chowpatty (Beach). By the said letter, the area of 10 Hectares was handed over by the District Collector to the third Respondent Municipal Corporation subject to conditions incorporated in the said letter. The first condition was

that the ownership of the said land admeasuring 10 Hectare (for short “the said land”) will continue with the State Government and only after the permission is granted by the State Government, the said land would be transferred to the third Respondent. It is stated that only with a view to prevent the encroachments on the said land that the Municipal Corporation was being placed in possession. Further condition imposed was that the mangroves on the said land should not be removed and no functions and meetings etc shall be allowed to be held without permission of the Collector. On 4th May 2011, a Resolution was passed by the Standing Committee of the third Respondent Municipal Corporation stating that the said land shall not be allowed to be used for religious or any other function and the directions of the State Government to be scrupulously implemented. It recorded that the said land will be available for the benefit of the citizens and in particular, for the children. By the Resolution dated 30th December 2011 passed by the General Body of the third Respondent Municipal Corporation, the Resolution dated 4th May 2011 of the Standing Committee was cancelled and it was resolved that the said land should be allowed to be let out by the Municipal Corporation for the public as well as the religious functions by accepting the rent of Rs.1,000/- per day and a deposit of Rs.5,000/-. It is this Resolution which is subject matter of challenge in this PIL.

3. By filing an additional affidavit, the Petitioner has pointed out the instances of permissions granted by the third Respondent Municipal Corporation for holding the functions on the said land. The photographs are annexed to show how the beach forming a part of the said land was damaged and how the structures were allowed to be erected.

4. There is an affidavit-in-reply filed By Shri Deepak Bhaskar Khambit, the Executive Engineer of the third Respondent Municipal Corporation. It is accepted that the possession of the said reserved land was handed over to the Municipal Corporation. What is stated in Paragraph 2 of the said affidavit by the said officer reads thus:

“2. ...I say that corporation has developed playground, joggers park and kid garden on about 3 hectors land out of the same. I say that out of balance 7 hectors land, about 0.66 hectors land is given for religious and cultural functions pursuant to policy decision taken by the corporation. I say that general public is not excluded from those functions. I say that no permanent structure is constructed. I say that permission is granted subject to conditions including condition to obtain prior permission of collector and to observe cleanliness. I say that there are no complaints from citizen regarding noise pollution and/or non observance of cleanliness, as alleged. I say that use permitted by the corporation is in consonance with the reservation. I say that petitioner has misinterpreted the judicial pronouncements so also legal provisions.”

(Underline added)

5. In Paragraph 3 of the said affidavit, a statement is made that the Petitioner is supporting the Resolution dated 4th May 2011 by which the concerned land was permitted to be used for religious and cultural functions organized by the Municipal Corporation such as Ganeshotsav, Navratri and Chatpuja etc.

6. The learned counsel appearing for the Petitioner pointed out that the impugned Resolution passed by the General Body of the third Respondent Municipal Corporation is completely illegal and the same is contrary to the conditions imposed by the Collector in his letter dated 16th May 2007. She pointed out that the General Body of the third Respondent Municipal Corporation cannot act contrary to the conditions imposed by the Collector as the ownership of the said land continues to vest in the State Government. Inviting our attention to the averments in the additional affidavit, photographs and the documents annexed to the additional affidavit, she pointed out that as the Municipal Corporation is allowing the user of the said land which is a part of the beach for various functions, it is creating lot of pollution. She pointed out the photographs which show that the functions are allowed to be held in the close proximity of the sea and mangroves.

7. The learned counsel appearing for the third Respondents invited our attention to the note submitted by the Municipal Administration before the General Body of the Municipal Corporation. A copy of the said note is annexed at Page 19. He pointed out that the Commissioner of the Municipal Corporation had pointed out to the General Body that no such user of the said land (Beach/Chowpatty) can be permitted in the light of the conditions imposed by the Collector. He pointed out the Resolution passed by the Standing Committee which permits the programmes conducted by the Municipal Corporation.

8. We have considered the submissions. We have perused the letter dated 16th May 2007 addressed by the District Collector, Thane, to the Municipal Commissioner of the third Respondent. In the affidavit-in-reply filed by the Executive Engineer of the third Respondent, the correctness thereof is not disputed. We have carefully perused the terms and conditions incorporated in the letter dated 16th May 2007. The said land was handed over to the third Respondent by way of advance possession only with a view to ensure that there are no encroachments made thereon. A specific condition was imposed in the said letter that no functions, meetings, etc shall be held on the said land without permission of the District Collector. A condition was imposed directing the third Respondent to ensure that the mangroves on the said land are protected. We have perused the Resolution dated 4th May 2011

passed by the Standing Committee of the Municipal Corporation. The Resolution provides that the said land should not be let out for holding any religious and other functions. However, the Resolution records that the said land can be used for the religious functions such as Ganeshotsav, Navrati, Chatpuja etc. which are conducted by the third Respondent Municipal Corporation. The condition imposed vide letter dated 16th May 2007 is that no programme or meeting of whatsoever nature shall be allowed to be held on the said land without permission of the Collector. Therefore, even the Municipal Corporation was not entitled to hold any function, whether religious or otherwise on the said land without permission of the Collector. To that extent, the Resolution passed by the Standing Committee is completely contrary to the conditions imposed by the Collector. The impugned Resolution passed by the General Body goes one step ahead and provides that the Municipal Corporation will be entitled to let out said land for religious and cultural functions.

9. The affidavit-in-reply filed by the Executive Engineer of the third Respondent records that the area of about 0.66 Hectare is being allowed for functions in terms of the General Body Resolution for religious and cultural functions.

10. The letter dated 16th May 2007 shows that the third Respondent is merely a caretaker of the said land. The ownership continues to vest in the State Government. Therefore, the third Respondent is bound by all the terms and conditions incorporated in the said letter. The said land is not vested in the third Respondent and, therefore, the General Body of the third Respondent Corporation had no authority to pass a Resolution permitting letting out of the said land for the religious and cultural functions. Moreover, the said Resolution is contrary to the conditions imposed by the Collector. The additional affidavit of the Petitioner shows that in breach of the conditions imposed by the State, the Municipal Corporation allowed several functions to be held on the said land and the pandals and other structures were allowed to be put up on the said land which is a part of a beach. Therefore, the State Government will have to consider whether any action deserves to be taken against the third Respondent Municipal Corporation for committing the breach of the terms and conditions.

11. Suffice it to say that the impugned Resolution of the General Body dated 30th December 2011 is completely illegal. The third Respondent cannot deal with Government land which was entrusted to it only as a care-taker. The suggestion incorporated in the Resolution dated 4th May 2011 of the Standing Committee that the

religious functions conducted by the Municipal Corporation should be permitted on the said land is again completely illegal. We may note here that the Commissioner of the Municipal Corporation in the note submitted before the General Body of the Municipal Corporation had pointed out the correct legal position by referring to the conditions imposed in the letter dated 16th May 2007.

12. Hence, the Petition must succeed and we pass the following order:

ORDER :

- (a) The impugned Resolution dated 30th December 2011 (Exhibit- D to the Petition) is hereby set aside. We, however, clarify that what is restored is a part of the Resolution dated 4th May 2011 passed by the Standing Committee of the Municipal Corporation. We clarify that that part of the said Resolution dated 4th May 2011 which permits functions of the Municipal Corporation held on the said land is also illegal and shall not be implemented;
- (b) We clarify that the third Respondent has no authority to allow any function to be held on the said land whether religious or otherwise as the said authority vests in the District Collector;

- (c) We clarify that the Municipal Corporation shall not hold any religious or other functions on the said land without obtaining prior permission of the District Collector;
- (d) We direct the District Collector to look into the breaches committed by the third Respondent. The Collector may consider of revoking of the permission granted under the letter dated 16th May 2007 so that the said land which is a part of the Beach/Chowpatty can be properly protected;
- (e) Appropriate decision shall be taken by the Collector in accordance with law within a period of three months from today;
- (f) All concerned including the Collector shall act upon an authenticated copy of this order;
- (g) Rule is made absolute on above terms.

(C.V. BHADANG, J)

(A.S. OKA, J)