

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO. 61 OF 2015

Shri Nilesh Rajendra Dalvi. ... Petitioner.
V/s.
The State of Maharashtra and others. ... Respondents.

Rushikesh Barge i/b. Sugandh B. Deshmukh for the petitioner.
Mrs.M.P.Thakur, AGP for respondent No.1.
Sandeep V. Marne for respondent Nos.2 to 4.
V.A.Thorat, Sr.Advocate with Harinder Toor, S.B.Pawar, Ms.Swati Sawant
and Ms.Nikita Jacob i/b. S.K.Legal Asso. for respondent Nos.5 to 7.

CORAM : A.S. OKA AND C.V.BHADANG, JJ

DATED : 29th January 2016.

PC. :

Heard the learned counsel appearing for the petitioner who seeks time. Heard learned counsel for the respondent Nos.2 to 4 and the learned senior counsel for the respondent Nos.5 to 7.

2. There was a direction issued by this Court on 16th November 2015 recording the statement of the learned counsel appearing for the respondent Nos.2 to 4 that an officer of second respondent- Municipal Corporation has visited the site and will file a reply. Accordingly, a reply has been filed by Shri Subhash B. Ingale, Deputy Municipal Commissioner (Encroachment). The site inspection report dated 1st December 2015 is annexed to the said reply. The letter dated 3rd January 2015 issued by the Deputy Commissioner (Encroachment), Navi Mumbai Municipal

Corporation addressed to the designated officer of the concerned ward is also annexed calling upon the designated officer to make site visit and take action in accordance with law.

3. The report annexed to the affidavit records certain violations. The learned counsel appearing for the Municipal Corporation states that an appropriate action would be initiated on the basis of the said report in accordance with law within a period of four weeks from today. The learned senior counsel appearing for the respondent Nos.5 to 7 raises an issue regarding the locus of the petitioner. His submission is that there are no violations. His submission is that a writ of mandamus cannot be issued against the ninth respondent as there is no power vested with the ninth respondent to take any action against the fifth respondent. It is stated that the fifth respondent is not concerned with the construction as the same has been carried out by the respondent Nos.6 and 7 who are her sons. He stated that at present, the fifth respondent is a Member of the Maharashtra Legislative Assembly.

4. It is true that as far as prayer (D) is concerned, there is a merit in the submission canvassed by the learned senior counsel for the respondent Nos.5 to 7. However, now the affidavit of the Deputy Municipal Commissioner to which inspection report has been annexed shows that it is found that certain work has been carried out which is in variance with the occupation/completion certificate. Now there is an assurance given by the Municipal Corporation to initiate an action on the basis of the said report. It is obvious that before taking any action on the basis of the report, the Municipal Corporation will have to hear the concerned respondents including the respondent Nos.5 to 7 in accordance with law.

5. The learned senior counsel appearing for the respondent Nos.5 to 7 invited our attention to the letter dated 9th March 2010. The said letter records that the construction was carried out by the sixth and seventh respondents without obtaining plinth certificate and that certain changes were made in the sanctioned plan without obtaining the permission. Therefore, the security deposit made by them has been forfeited. The submission of the learned senior counsel is that the changes which are reflected in the inspection report are the same changes which are noticed while issuing the letter dated 9th March 2010. As the respondent No.7 has not disclosed in his affidavit what are the unauthorized changes which were made prior to 9th March 2010, it cannot be accepted that the changes which are shown in the inspection report were already made prior to 9th March 2010.

6. Hence we pass the following order:

(i) We accept the statement made by learned counsel for the respondent Nos.2 to 4 that an appropriate action shall be initiated within a period of four weeks from today. Needless to state that the Municipal Corporation shall grant opportunity of being heard to all the respondents including the respondent Nos.5 to 7 before initiating any action in respect of the alleged violations.

(ii) The issue of locus of the petitioner is kept open.

(iii) The petition is disposed of in the above terms.

(C.V. BHADANG, J)

(A.S.OKA, J)