

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2474 OF 2015

Shrikant J. Parikh .. Petitioner
-Versus-
Amit Nensey & Ors. ..Respondents

Mr. Sunny Shah i/b. Ashwin Ankhad & Associates for petitioner
Ms. Suvarna Joshi for respondent Nos. 1 to 3
Mrs. M.S.Bane, AGP for State.

CORAM : G.S.KULKARNI, J.

DATE : 20th January 2016.

P.C.

1] By this petition, the petitioner, who claims to have a lease hold interest, which is disputed by the respondent Nos. 1 to 3, challenges the order passed by the Commissioner, Konkan Division dated 30th December 2011, as confirmed in appeal by the State Government by an order dated 30th January 2014.

2] The grievance of the petitioner is with regard to the N.A.permission which is granted to one M/s. Amir Parks and Amusements Pvt. Ltd. (now known as M/s. Royal Palms India Pvt. Ltd.) by an order dated 25th September 1998, passed by the Collector, Mumbai Suburban District.

The contention of the petitioner is that Condition Nos. 3, 8 and 9 of the N.A. permission have not been complied by respondent Nos. 1 to 3. The said conditions read as under:-

“3. that the grantee shall construct the building according to the plan approved by the Greater Bombay Municipal Corporation”

8. that the grantee shall pay the conversion tax as per the schedule, which is equal to three times of N.A. assessment within 30 days from the date of issue of this order, failing which the N.A. permission shall be liable to be cancelled. The grantee shall also pay a sum of Rs.1,12,675/- being a penalty equivalent to five times of a.n.a.a. for unauthorised proceeding with construction work before issue of N.A. permission”

“9. that the grantee shall pay the measurement fees to the concerned C.T.S.O., B.S.D. immediately.”

3] By the impugned order dated 30th December 2011, the Commissioner, Konkan Division partly allowed the appeal filed by the petitioner, inasmuch as, it was recorded that prima facie, there appeared to be a breach of the conditions of the N.A.order. However, before any action is taken, it was felt necessary that the actual position be verified and for that reason, the Additional Commissioner directed the Collector, Mumbai Suburban District to conduct an enquiry with regard to the NA permission in question and to submit a report within three months. It was

also directed that till such enquiry is completed, no further application for NA permission in respect of Survey No.1627-A be considered.

4] The petitioner was aggrieved by this direction and the non cancellation of the NA permission and, therefore, the petitioner approached the State Government in revision application filed under section 257 of the Maharashtra Land Revenue Code. By the impugned order dated 30th January 2014, the application has been rejected by the State Government confirming the directions as issued in the order dated 30th December 2011 by the Additional Commissioner, Konkan Division.

5] The learned Counsel for the petitioner submits that the appeal of the petitioner ought to have been allowed by the Additional Commissioner and that the authorities below have erred in passing the impugned order.

6] In my opinion, the submission is not well founded, for the reason that the Additional Commissioner after considering the facts as placed on record on behalf of the petitioner, has prima facie, found substance in the complaint of the petitioner that there are certain violations of the terms and conditions of N.A. permission. Accordingly, the Commissioner had directed the Collector, Mumbai Suburban to undertake an enquiry and make a report to that effect within three months.

7] It appears that though the direction was issued as back as on 30th December 2011 by the Additional Commissioner, no action has been taken to make a report to that effect. Once such a finding is recorded, it was imperative for the Collector, Mumbai Suburban to undertake an enquiry and make a report to that effect to the Additional Commissioner, Konkan Division and take appropriate action, if so necessary. Having considered the nature of the directions in the orders passed by the Additional Commissioner, Konkan Division, I do not find that there is any perversity in the findings as recorded by the authorities below. It is not the case that the authorities have reached to a final conclusion that there is a breach of terms and conditions. But, an enquiry has been ordered to look into the same. The contention of the petitioner that on this finding as recorded by the Additional Commissioner, Konkan Division, the N.A. permission ought to have been cancelled, therefore, cannot be accepted.

8] However, the directions which are contained in the order dated 30th December 2011 passed by the Additional Commissioner, Konkan Division cannot be overlooked. Learned AGP is not able to assist the Court as to whether any report has been made by the Collector, Mumbai Suburban, much less any action taken in that regard. It would be therefore in the interest of justice that the orders dated 30th December 2011 are brought

to their logical conclusion. The Collector, Mumbai Suburban is accordingly directed to comply with the orders dated 30th December 2011 passed by the Additional Commissioner, Konkan Division, as early as possible and in any event, within a period of six weeks from today. This direction is necessary as the order of the Commissioner is passed on 30th December 2011, which still appears to have not been complied. Such state of affairs cannot be countenanced. Except for the above observations, no interference in the petition is called for. By keeping all the contentions of the parties expressly open, the petition is disposed of in the aforesaid terms. No costs.

(G.S.KULKARNI, J)