

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10539 OF 2014
ALONG WITH
WRIT PETITION NO.5127 OF 2013

Sou. Kashibai Govind Vaze,
Through Shri Naresh Govind Vaze. .. Petitioner
Vs
Tahsildar, Vasai and Others. .. Respondents

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Shri Naresh Govind Vaze, the Petitioner in person.
Shri Atul G. Damle, Senior Counsel along with Shri Vishesh Kalra i/b
Vidhii Partners for the Respondent No.1 in WP No.5127 of 2013.
Shri Makarand S. Karnik for the Respondent Nos.4 to 7 in WP No.5127
of 2013.

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CORAM : A.S. OKA & C.V. BHADANG, JJ
DATED : 8TH FEBRUARY 2016

P.C.

1. Heard the Petitioner appearing in person. The challenge in Writ Petition No.10539 of 2014 is essentially to the mutation entry made under the provisions of the Maharashtra Land Revenue Code, 1966 (for short “the said Code”). The Petitioner has a statutory remedy of Appeals and Revision under the said Code for challenging the mutation entries. Therefore, we decline to entertain the said Writ Petition. However, it will be open for the Petitioner to adopt appropriate remedies.

2. In Writ Petition No.5127 of 2013, the grievance of the Petitioner is that the order passed on the representation has not been communicated to him by the Vasai Virar Municipal Corporation. His

submission is that the illegal construction is being carried out by the fourth to seventh Respondents. His submission is that the document of transfer on the basis of which the said Respondents are claiming is void. His submission is that the officer of the Vasai Virar Municipal Corporation who has filed an affidavit-in-reply has no authority to file such affidavit-in-reply on behalf of the Municipal Corporation. He relies upon the survey plans. He submits that the fifth to seventh Respondents have no right to carry on construction. He submitted that there is no separate permission granted to carry on construction under the Maharashtra Municipal Corporations Act, 1949. He pointed out that even building permission allegedly granted has been challenged in the Petition. He invited our attention to the prayer made in the alternative in Prayer Clause (C-1).

3. We have considered the submissions. We have perused the affidavit in reply filed by Shri Y.S. Reddy on behalf of the first Respondent Municipal Corporation. The affidavit-in-reply dated 17th March 2014 discloses that the said officer is the Deputy Director of Town Planning of the first Respondent Municipal Corporation. He has annexed to the affidavit-in-reply at Exhibit-B, the commencement certificate and development permission dated 6th July 2012 granted under the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”) to Mr. Israr M. Khan and Shri Niyas Pathan. He

has also annexed the Revised Development Permission granted under Section 45 of the MRTP Act on 8th January 2014 to M/s. Shree Ganesh Developers. On 22nd January 2014, a Plinth Completion Certificate has been granted by the first Respondent - Corporation to the said M/s. Shree Ganesh Developers.

4. Prayer Clause (C-1) is very vague, which reads thus:

“(C-1) I pray that it be declared that there is no sanction of building plan in existence. OR IN ALTERNATIVE the alleged/supposedly sanction plan be revoked and withdrawn, declaring the same bad in law illegal and can not be acted upon & the construction carried out is/on disputed land is illegal.”

5. There are no grounds set out as to how the Revised Development Permission granted under Section 45 of the MRTP Act and the Plinth Completion Certificate are illegal. Hence, the said prayer cannot be granted. The prayer clause (a) proceeds on the footing that illegal construction is being carried out. The prayer clause (b) is for interim relief. The prayer clause (c) is for recovery of cost of removal of illegal construction.

6. A copy of the sanctioned plan is placed on record. If the grievance of the Petitioner is that the construction is contrary to the sanctioned plan, it is for the Petitioner to approach the Municipal Corporation with the specific grievance by giving material particulars.

At this stage, the Petitioner appearing in person states that the sanctioned plan itself is fabricated. There is no such challenge in this Petition. The Development Permission and Plinth Completion Certificate relied upon in the affidavit filed by the Deputy Director of Town Planning of the first Respondent Vasai Virar Municipal Corporation are on the letter head of the Municipal Corporation. Therefore, in the Writ Petition, the contention that the said documents are fabricated cannot be accepted.

7. Subject to what is observed above, the Petitions are disposed of. We direct the Municipal Corporation to supply a copy of the communication dated 18th February 2014 to the Petitioner within a period of two weeks from today. If the Petitioner wants to contend that the communication dated 18th February 2014 is issued without giving hearing to the Petitioner, it is for him to challenge the said communication in accordance with law.

8. Pending Civil Applications do not survive and the same are disposed of.

(C.V. BHADANG, J)

(A.S. OKA, J)