

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 221 OF 2013

IN

PUBLIC INTEREST LITIGATION NO. 217 OF 2009

Municipal Corporation of Greater

Bombay

... Applicants/ org.Respondent No.1.

V/s.

Pandurang Patil

... Respondent /Org.Petitioner.

WITH

CIVIL APPLICATION NO. 155, 58 AND 80 OF 2017

None for the Petitioner.

Mr. A.Y. Sakhare, Sr. Advocate a/w. Mr. Vinod Mahadik and Mr. Harshvardhan Borse for Respondent in PIL and for Applicant in CAI/58/17.

Mr. R.S. Apte, Sr. Advocate a/w. Mr. Y. S.Khochare, AGP for the Respondent – State.

Mr. Paritosh Jaiswal a/w. Mr. Nikunj Mehta and Mr. Vignesh Kamat I/b Ashok Purohit and Co. for the Applicant in CAO/155/2017.

Ms Rekha Panchal for Respondent No.3 in CAI/58/2017.

CORAM : A.S. OKA AND M.S. SONAK, JJ.

DATE : 2nd NOVEMBER 2018.

P.C.:

1] Perused the order dated 2nd April 2013 by which the Division Bench of this Court disposed of the Public Interest Litigation (for short “PIL”) and other connected matters.

2] The orders passed thereafter and especially the order dated 3rd August 2018 record that there is only one facility available in the city of Mumbai for dealing with the solid waste as per the provisions of Municipal Solid Wastes (Management and Handling) Rules, 2000 and Municipal Solid Waste Rules, 2016. The said facility has capacity of only 3000 Metric

Tonnes (for short “MT”) per day. As per the findings recorded in the various orders, the daily generation of the solid waste in the city of Mumbai is about 8000 to 9000 MT. However, in the recent affidavit dated 15th October 2018 filed by the Municipal Commissioner on behalf of the Municipal Corporation, it is claimed that the generation of solid waste has come down to 7300 MT per day. Taking the said statement as correct for the time being, the existing facility does not have the capacity of disposing of even less than half of the of solid waste generated in the city of Mumbai. The earlier orders passed by this Court from time to time indicate that the State Government allotted two lands to the Municipal Corporation one at village Karavale, Taluka Ambernath, District Thane and the other at Mulund. The land at village Karavale was allotted knowing fully well that a substantial part of it is encroached upon by various persons most of whom are Tribals and a part thereof is affected by GAIL pipeline. As far as the Mulund plot is concerned, the same was allotted to the Municipal Corporation knowing fully well that the Union of India is claiming ownership over it and that a third party is claiming to be the lessee of the Union of India. Notwithstanding several orders passed by this Court from time to time, the matter is standstill in the sense that the State Government has taken no steps to hand over the actual physical possession of both the lands. The affidavits on record and earlier orders note that the entry of the survey of officers of the State was resisted on the land at Mulund even by the staff of the Salt Department of the Government of India.

3] As a result of the delay as noted in the earlier orders, the number of illegal structures on the land at village Karavale have increased.

4] Though the record reflects that the actual physical possession of the land at village Karavale was never handed over, on one of the earlier dates, the State Government Officers who were present in the Court made a bold claim that actual physical possession of the land at Karavale was handed over to Municipal Corporation. However, this aspect need not be gone into as Dr. Madhav V. Veer, Deputy Secretary, Revenue and Forest Department, Mantralaya, Mumbai, Shri. Shrikant B. Pawar, Under Secretary, Revenue and Forests Department, Mantralaya, Mumbai, Shri. Shivaji Patil, Residential Deputy Collector, Thane District, Shri. Jagatsingh Girase, Sub-Divisional Officer, Ulhasnagar Sub-Division, Thane District, Shri. Jairaj Deshmukh, Tahsildar Ambernath, Thane District, have filed a joint affidavit dated 24th October 2018 stating that the statement made on their instructions by the learned Senior Counsel appearing for the Government that actual physical possession of the government land of village Karavale was handed over to Municipal Corporation was a wrong statement. By the said affidavit, they have tendered apology. By accepting apology, we treat the matter as closed and no further action is called for in this behalf.

5] We may note here that notwithstanding several orders of this Court, there is no explanation forthcoming from the State Government as to how the land at Mulund which is a subject matter of the litigation filed by the Union of India against the State Government was allotted to the Municipal Corporation. Moreover, a suit is pending in respect of the said land in this Court.

6] On 31st October 2018, an affidavit was affirmed by Shri. Sanjay S. Gokhale, Joint Secretary, Urban Development, Department. In the said affidavit, following statements have been made in paragraphs 3,4 and 5, which read thus:

“3. I say and submit that in the meeting Hon'ble Chief Minister has directed that of about 30 acres of continuous piece of land out of the 38.87 ha of Government land allotted to MCGM by making it encumbrance free should be given to MCGM within a period of three months. The District Collector Thane and Divisional Commissioner Kokan Division have been directed to ensure the compliance of this decision within a specified period of three months. Also, MCGM has been directed to provide necessary man power & machinery for making the land encumbrance free if required.

4. I say and submit that, the District Collector, Thane has been directed to prepare and submit a special package proposal for rehabilitation of the encroachers on the remaining land allotted to MCGM for the project of Solid Waste Management within a period of 15 days to Relief and Rehabilitation Department, Government of Maharashtra. It has been decided that, the Relief and Rehabilitation Department should obtain approval of Government to the said proposal within a period of 15 days thereafter.

5. I say and submit that, the whole process of rehabilitation of the encroachers on the Government Land at Karavale, Tal. Ambarnath, Dist. Thane and making available land useful for Solid Waste Management should be completed within a period of 1 year.”

7] The learned Senior Counsel appearing for the Mumbai Municipal Corporation, on instructions, accepted that if vacant possession of the area about 30 Acres out of the land at Karavale is handed over to the Mumbai Municipal Corporation, it will be in a position to start all activities for setting up the project of solid waste disposal facility. We accept the statements made in paragraphs 3 to 5 of the affidavit of Shri. Gokhale which mentions the time lines, as undertakings of the State Government.

We, therefore, direct the State Government to hand over the vacant possession of area of about 30 Acres out of the land at Village Karavale to Mumbai Municipal Corporation on or before 31st January 2019.

8] As regards the land at Mulund, there is no further progress made set out in the affidavit. We, therefore, direct the State Government to file an affidavit pointing out the progress made in terms of securing actual physical possession of the land agreed to be allotted to the Mumbai Municipal Corporation which is situated at Mulund. Such affidavit shall be filed on or before 15th December 2018.

9] The learned counsel appearing for the intervenor invited our attention to the affidavit dated 15th October 2018 filed by Municipal Commissioner. He submitted that though the affidavit talks about process of commencement of closing the Mulund Dumping Ground, there is no such statement made by the Municipal Corporation as regards the closure of Deonar Dumping Ground which was required to be closed long back as per order dated 2nd April 2013 in the aforesaid PIL. We, therefore, direct the Municipal Corporation to file an affidavit setting out the outer limit within which process of closing the Deonar Dumping Ground will be completed. Even such affidavit shall be filed on or before 15th December 2018.

10] Place the Civil Applications on 17th December 2018 for considering both the affidavits.

(M. S. SONAK, J.)

(A.S.OKA, J.)