

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8804 OF 2013

Smt. Kamlavati Chaturbhuj Kela & Others. .. Petitioners
Vs
Municipal Corporation of City of Nashik
and Others. .. Respondents

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Shri G.S.Godbole i/b Shri Drupad S. Patil for the Petitioners.
Shri Rupesh Lanjekar i/b Shri M.L. Patil for the Respondent Nos.1 and
2.
Shri Manish M. Pabale, AGP for the Respondent Nos.4 and 5.
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CORAM : A.S. OKA &
SMT. VIBHA KANKANWADI, JJ

DATED : 19TH JULY 2017

P.C.

1. Heard learned counsel appearing for the Petitioners, the learned counsel appearing for the first and second Respondents and the learned AGP for the fourth and fifth Respondents.

2. Initially, this Petition under Article 226 of the Constitution of India was filed seeking a writ of mandamus in terms of prayer clause (a), which reads thus:

“(a) That this Hon'ble Court be pleased to issue a writ of Mandamus or any other writ in the nature of writ of Mandamus thereby directing the Respondent Nos.1 to 3 herein to forthwith inspect the WBM internal lay out roads and D.P Road which have been

prepared by the Petitioners in the land bearing Survey No.289/1(Part) and 289/2(Part) of Nashik pursuant to the approved tentative layout plans dated 19.7.2004 bearing No.TPD/Panchvati/71 and TPD/Panchvati/72 being Exhibit A to this Writ Petition and to take over the said roads and open spaces in the said layout, accept the charges for street lights and comply with all formalities required to be done by Respondent Nos.1 to 3 communicating their consent for permission of conversion of said lands to NA user.”

3. Thereafter, the Petition was amended on 20th January 2016 on the basis of the statements made in the affidavit-in-reply dated 14th August 2015 filed by Shri Akash T. Bagul, the Assistant Director of (Town Planning) in the first Respondent Municipal Corporation. In the said affidavit-in-reply, a reliance was placed on the Notification dated 4th September 2013 issued by the State Government in exercise of the powers under Sub-section (2) of Section 37 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”). In the said affidavit-in-reply, there was a reference to a Resolution passed by the General Body proposing to submit a proposal to the State Government for modification of the Development Plan.

4. By amending this Petition, a prayer was incorporated for quashing the said Government Resolution dated 4th September 2013 issued under Sub-section (2) of Section 37 of the MRTP Act. In the added ground (j), it was contended that the first Respondent Municipal Corporation submitted a proposal without publishing a notice in the

official gazette. In Ground (k), it was contended that all the affected persons ought to have been served with notices and they ought to have been given an opportunity of being heard. It was specifically contended in Ground (k), which reads thus:

“(k) The Petitioners state that no such notice was served on the Petitioners with respect to the proposed modification and modification which is ultimately sanctioned by Notification dated 04.09.2013.”

Again in Ground (m), a stand is taken that though the State Government by its letter dated 21st April 2007 had directed the Nashik Municipal Corporation to take steps for modification of the Development Plan within a period of 90 days, a Notification was not published in the official gazette by the Municipal Corporation.

5. After the amendment was carried out, another affidavit was filed by the first Respondent Municipal Corporation. The said affidavit is filed again by Shri Akash Tikaram Bagul. In Paragraphs 2 and 3 of the said affidavit, the following statements were made.

“2. I say that the Petitioner's land Survey No.289 fell in residential zone in the development plan. I say that a preliminary notification dated 17.12.2007 was published in the MGG dated 18.12.2007 and also in the newspapers dated 20.12.2007 proposing to modify the DP and to reserve the said land alongwith other lands for the public purpose of “Sadhugram” and thereby invited

suggestions and objections. Hereto annexed and marked Exhibit-'A' Colly are true copies of Notification and Public Notices issued in the Newspapers.

3. I say that the suggestions and objections received were considered after giving an opportunity to the land owners who had submitted objections. I say that a report was submitted to the General Body. Hereto annexed and marked Exhibit-'B' is a copy of the Report.”

6. A copy of the Gazette Notification dated 18th December 2007 was annexed to the said affidavit along with copies of the said Notification published in the daily newspapers “Gavkari” and daily “Lokmat” on 20th December 2007.

7. On 16th June 2017, attention of this Court was invited to aforesaid ground (k) in Paragraph 17 of the Petition by pointing out that the affidavit-in-reply of the Municipal Corporation does not deal with this ground. Therefore, in terms of the directions issued by this Court, another affidavit is filed on behalf of the first and second Respondents by Shri Daulat Valuba Ghule, Deputy Engineer of the first Respondent. A copy of the written objections submitted by the Petitioners on 15th January 2008 is annexed to the said affidavit. Exhibit-B to the said affidavit shows that on 28th January 2008, hearing was given on the said objections to the Petitioners who had been represented by the second and the third Petitioners. Exhibit-B is recording of the proceedings of the hearing given to the second and

third Petitioners. To the said affidavit, from Page 145 onwards, copies of notices issued to the Petitioners calling upon them to remain present for hearing have been annexed. Exhibit-C to the said affidavit is a report submitted on the basis of the hearing given to the parties between the period from 24th January 2008 to 1st February 2008.

8. Perusal of the said letter of objection dated 15th January 2008 shows that the same has been signed by the second and third Petitioners for themselves and as the Constituted Attorney of the other three Petitioners (first, fourth and fifth Petitioners). The said objections refer to the notice published in the daily “Gavkari” on 20th December 2007 under Sub-section (1) of Section 37 of the MRTP Act.

9. Thus, the second and third Petitioners were fully aware that there was a notice published in accordance with Sub-section (1) of Section 37 of the MRTP Act in the daily “Gavkari” on 20th December 2007. This fact was suppressed while amending the Petition. Even the most crucial facts that the Petitioners had filed objections on the basis of the said notice and that the Petitioners were given hearing on the said objections on 28th January 2008 have been suppressed.

10. As indicated earlier, the amended grounds proceed on the footing that no opportunity was made available to the Petitioners to

raise objections to the proposed amendment to the Development Plan and no opportunity of being heard was granted to them. In fact, on the basis of the objections filed by them, individual notices were issued to the Petitioners on 21st January 2008 calling upon them to remain present on 28th January 2008 for hearing them.

11. Thus, this is a gross case of suppression of material facts. The Petitioners have invoked jurisdiction of this Court under Article 226 of the Constitution of India. The said jurisdiction is always discretionary and equitable. Therefore, not only that the Petition deserves to be thrown out on the ground of suppression of material facts, but this is a case where the Petitioners should be saddled with compensatory costs.

12. The learned counsel appearing for the Petitioners submits that the Petitioners may not be penalized as the amendment was carried out on the basis of the instructions given by the Constituted Attorney of the Petitioners and in fact, the Petition has been affirmed by the Constituted Attorney. He submits that there is an ongoing dispute between the Petitioners and their Constituted Attorney.

13. We are least concerned with the disputes between the Petitioners and their Constituted Attorney. The Constituted Attorney acted on behalf of the Petitioners and, therefore, if the Constituted

Attorney has made a false statement, it is a matter between the Petitioners and their Constituted Attorney.

14. The learned counsel appearing for the Petitioners states that the advocate for the Petitioners had addressed a letter dated 12th July 2017 to the Petitioners and a copy of the said letter was forwarded to the Constituted Attorney of the Petitioners. He states that neither the Petitioners nor their Constituted Attorney have given any instructions. The said letter is taken on record and marked "X2" for identification.

15. Considering the extent of suppression of material facts, this is a fit case where costs quantified at Rs.50,000/- will have to be made payable by the Petitioners to the first Respondent Municipal Corporation of City of Nashik.

16. Accordingly, we pass the following order.

ORDER :

(a) The Writ Petition is rejected.

(b) The Petitioners shall pay the costs quantified at Rs.50,000/- to the first Respondent Municipal

Corporation of City of Nashik within a period of one month from the date on which this order is uploaded;

- (c) For reporting compliance regarding payment of costs, the Petition shall be listed on 30th November 2017 under the caption of “Direction”.

(SMT.VIBHA KANKANWADI, J)

(A.S. OKA, J)