

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11276 OF 2014

Manoj Ramanand Prajapati. .. Petitioner
Vs
State of Maharashtra and Others. .. Respondents

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Ms. Sneha Phene i/b Shri Gireesh U.G. Menon for the Petitioner.
Shri Manish M. Pabale, AGP for the Respondent No.1.
Shri Ashutosh M. Kulkarni for the Respondent No.2.
Shri Rajveer R. for the Respondent No.3.
—

CORAM : A.S. OKA &
SMT. VIBHA KANKANWADI, JJ

DATED : 10TH JULY 2017

ORAL JUDGMENT : (PER A.S.OKA, J)

1. Heard learned counsel appearing for the Petitioner, the learned AGP for the first Respondent and the learned counsel appearing for the second Respondent. The learned counsel appearing for the third Respondent seeks time.

2. This is a case where construction of seven buildings consisting of the ground plus three floors having a carpet area of approximately 70,000 sq. feet has been made without obtaining development permission from the Planning Authority under the

Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”).

3. According to the case of the Petitioner who is a Proprietor of New Prajapati Builders & Developers, an Application was made to Adai Gram Panchayat under the Bombay Village Panchayats Act, 1958 (for short “the Village Panchayats Act”) for grant of development permission. It is contended that at that time, the area covered by the said Village Panchayat was not a part of an area designated as Navi Mumbai Airport Influence Notified Area (NAINA) under the Government Notification dated 10th January 2013. According to the case of the Petitioner, a permission was granted by the said Village Panchayat (third Respondent), copies of which have been annexed at Exhibit-A and Exhibit-B to the Petition. According to the case of the Petitioner, construction of seven buildings was completed in December 2013. On 26th March 2014, permission was granted by the District Collector under Section 44 of the Maharashtra Land Revenue Code, 1966 (for short “the said Code”) for allowing non-agricultural user of the lands subject matter of this Petition bearing Survey Nos.110/4/A and 110/3. On 15th January 2014, notices were served by the second Respondent - City Industrial Development Corporation of Maharashtra Limited (CIDCO) calling upon the Petitioner to demolish the said buildings. According to the case of the Petitioner, pending grant of

permission to use the land for non-agricultural purposes, the Petitioner proceeded with construction on payment of Rs.70,000/- as fine. On 8th December 2014, the second Respondent communicated to the Petitioner that the construction carried out by the Petitioner is illegal which was continued notwithstanding the service of notices under Sub-section (1) of Section 54 of the MRTP Act. Therefore, the Petitioner was informed that the construction is liable for demolition.

4. Learned counsel appearing for the Petitioner submitted that Exhibits A and B are the permissions granted by the Village Panchayat of Adai which was competent to do so in the year 2011-2012. She submitted that Section 52 of the Village Panchayats Act empowered the Village Panchayat to grant such permissions. Her submission is that the fact that the second Respondent granted no objection shows that the second Respondent had no objection for the construction of buildings carried out by the Petitioner. She submitted that along with the letter dated 15th June 2014, the Petitioner submitted various documents to the second Respondent including the permissions granted by the Village Panchayat. She submitted that at no stage, the second Respondent has granted an opportunity of being heard to the Petitioner. She submitted that the impugned order of demolition is bad-in-law as it is in breach of the principles of natural justice. She submitted that the said Village Panchayat granted building completion certificates. She has tendered

across the bar copies of the two building completion certificates dated 3rd June 2013 and 30th July 2013 which are taken on record and marked “C1” and “C2” for identification. The learned counsel appearing for the second Respondent relied upon an affidavit-in-reply filed by the second Respondent.

5. We have given careful consideration to the submissions. At the outset, we may note here that in the affidavit of Shri Deepak Akade, the Tahsildar, Panvel, District Raigad, it is stated that even in the year 2011-2012, the District Collector was the Planning Authority as contemplated by Section 18 of the MRTP Act. According to the case of the Petitioner, the third Respondent Village Panchayat was the Competent Authority to grant a development permission under Section 45 of the MRTP Act. We have carefully examined the Exhibits A and B. The conditions on which the third Respondent purported to grant permissions have been set out in the said two documents. Item No.9 of the conditions records that the Village Panchayat has no objection for the Petitioner constructing buildings as shown in the accompanying plan. The Condition No.5 in both the documents specifically records that in the event the Petitioner wants to carry out construction work on the agricultural land, permission of the Collector is required to be obtained. It is further stated in Condition No.5 that if permission of the Collector is not obtained, the Village Panchayat will not grant any

permission. Exhibits A and B on plain reading show that the same are not the permissions granted by the third Respondent, but the same are the no objections recorded by the Village Panchayat. Even assuming that the Petitioner has paid the fine amount for grant of permission, the grant of permission was specifically made subject to condition of obtaining non-agricultural permission from the Collector. The Petitioner relied upon a letter dated 1st April 2011 (Exhibit-C to the Petition) addressed by the Assistant Director of Town Planning for Raigad-Alibag to the District Collector, Raigad-Alibag recommending grant of non-agricultural permission and development permission.

6. Ultimately, the permissions for non-agricultural use under Section 44 of the said Code were granted to the Petitioner in respect of Survey No.110, Hissa No.4A (Exhibit-G to the Petition) and Survey No.110 Hissa No.3 (Exhibit-H to the Petition). Reliance is placed by the Petitioner on the no objections submitted by the second Respondent -CIDCO to the Collector for grant of permission for non-agricultural use. We may note here that the second Respondent was constituted as the Special Town Planning Authority under the Notification dated 10th January 2013 for the area notified which is known as "NAINA". We may note here that the said no objections issued by the second Respondent which are at Exhibits-E and F show that the Village Adai was a part of the sanctioned Regional Plan of the MMRDA for Adai area. That is why

a stand has been taken by the State Government that in view of Section 18 of the MRTP Act, the Collector was the Planning Authority for the said area. What is more important is what is stated in the non-agricultural permissions granted by the Collector (Exhibits G and H to the Petition). In the said permissions, Clauses 4(1) to 4(3) have been incorporated which read thus:

“4(1) CIDCO's remarks are limited specifically for the permissibility of the intended activity with respect to the zoning provisions of the sanctioned RD/DP of the MMRDA and applicable DCRs.

4(2) CIDCO's remarks shall not be construed as development permission under any Act. No development shall be carried out on the aforesaid piece of land without obtaining development permission from CIDCO under Section 45 of the MR & TP Act, 1966.

4(3) For determination of the compatible uses in various zones, provisions under the sanctioned Regional Plan (R.P) of MMRDA or any other plans sanctioned by the Govt prior to appointment of CIDCO as SPA and permissible uses as per provisions of the Development Control Regulations in force shall be applicable.”

(Underline supplied)

7. Moreover, Clause 5 specifically lays down that the building plans shall be got sanctioned from the second Respondent.

8. The Petitioner is relying upon a Challan showing payment of Rs.70,000/- dated 9th October 2013, a copy of which is at Exhibit-I to

the Petition. The Challan specifically mentions that the construction carried out on the subject land was an unauthorised construction. There is no document placed on record to show that on deposit of the sum of Rs.70,000/-, the construction was regularized. The notices at Exhibit-J dated 15th January 2014 are seven notices issued in respect of RCC construction consisting of ground plus three floors which is in progress. The notices were issued by the second Respondent which is the Planning Authority. Only response by the Petitioner to the said notices was by a letter dated 15th June 2014 (Exhibit-K). By the said letter, the documents such as non-agricultural permission, the receipt showing payment of the sum of Rs.70,000/-, 7/12 extracts and the alleged permissions granted by the Gram Panchayat were submitted. Exhibit-N which is the impugned order dated 8th December 2014 specifically records that the development permissions have not been obtained by the Petitioner and, therefore, the construction subject matter of the said notices was illegal and, therefore, the third Respondent observed that the structures are liable to be demolished.

9. Even accepting the case made out by the Petitioner as it is, the so called permissions granted by the third Respondent Village Panchayat were subject to the Petitioner obtaining permission for non-agricultural use from the Collector under Section 44 of the said Code. The permissions under Section 44 of the said Code were granted in the

month of March 2014 incorporating the conditions Nos.4(1) to 4(3) and 5 which we have quoted above. Going by the case made out by the Petitioner, even before the permission for non-agricultural use was obtained by the Petitioner, the construction of seven buildings has already been completed. After service of the impugned notices which are at Exhibit-J to the Petition, the Petitioner could have applied for regularization. Instead of applying for regularization, the Petitioner relied upon the permissions granted by the Village Panchayat.

10. The learned counsel appearing for the Petitioner made a grievance that a copy of the affidavit-in-reply of Shri Deepak Akade, Tahsildar, Panvel, was not served to the Petitioner. Even if we ignore the said affidavit-in-reply, taking the case of the Petitioner as correct, there is no option but to hold that the Petitioner has illegally and high-handedly carried out construction of seven buildings consisting of ground plus three floors in a brazen manner. As far as the question of protecting the illegal constructions is concerned, the law is very well settled. In the case of *Dipak Kumar Mukherjee v. Kolkata Municipal Corporation and Others*¹, the Apex Court considered its earlier judgments including the well-known judgment in the case of *M.I. Builders Private Limited v. Radhey Shyam Sahu*². In the second paragraph of the said decision, the Apex Court observed thus:

¹ (2013)5 SCC 336

² (1999)6 SCC 464

“2. In last four decades, the menace of illegal and unauthorised constructions of buildings and other structures in different parts of the country has acquired monstrous proportion. This Court has repeatedly emphasized the importance of planned development of the cities and either approved the orders passed by the High Court or itself gave directions for demolition of illegal constructions as in (1) [K. Ramadas Shenoy v. Chief Officers, Town Municipal Council](#) (1974) 2 SCC 506; (2) [Virender Gaur v. State of Haryana](#) (1995) 2 SCC 577; (3) [Pleasant Stay Hotel v. Palani Hills Conservation Council](#) (1995) 6 SCC 127; (4) [Cantonment Board, Jabalpur v. S.N. Awasthi](#) 1995 Supp.(4) SCC 595; (5) [Pratibha Coop. Housing Society Ltd. v. State of Maharashtra](#) (1991) 3 SCC 341; (6) [G.N. Khajuria \(Dr\) v. Delhi Development Authority](#) (1995) 5 SCC 762; (7) [Manju Bhatia v. New Delhi Municipal Council](#) (1997) 6 SCC 370; (8) [M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu](#) (1999) 6 SCC 464; (9) [Friends Colony Development Committee v. State of Orissa](#) (2004) 8 SCC 733; (10) [Shanti Sports Club v. Union of India](#) (2009) 15 SCC 705 and (11) [Priyanka Estates International Pvt. Ltd. v. State of Assam](#) (2010) 2 SCC 27.”

11. Thereafter, the Apex Court in Paragraph 5 referred to its earlier decision in the case of *Friends Colony Development Committee v. State of Orissa*³. Paragraph 5 of the said decision reads thus:

“5. [In Friends Colony Development Committee v. State of Orissa](#) (supra), this Court noted that large number of illegal and unauthorised constructions were being raised in the city of Cuttack and made the following significant observations: (SCC pp. 742-44, paras 20 & 22-24)

3 (2004)8 SCC 733

“20.....Builders violate with impunity the sanctioned building plans and indulge in deviations much to the prejudice of the planned development of the city and at the peril of the occupants of the premises constructed or of the inhabitants of the city at large. Serious threat is posed to ecology and environment and, at the same time, the infrastructure consisting of water supply, sewerage and traffic movement facilities suffers unbearable burden and is often thrown out of gear. Unwary purchasers in search of roof over their heads and purchasing flats/apartments from builders, find themselves having fallen prey and become victims to the designs of unscrupulous builders. The builder conveniently walks away having pocketed the money leaving behind the unfortunate occupants to face the music in the event of unauthorised constructions being detected or exposed and threatened with demolition. Though the local authorities have the staff consisting of engineers and inspectors whose duty is to keep a watch on building activities and to promptly stop the illegal constructions or deviations coming up, they often fail in discharging their duty. Either they don't act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The unwary purchasers who shall be the sufferers must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders.....

22. In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalisation of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most

profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of it being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable intermeddling with the private ownership of the property may not be justified.

23. The municipal laws regulating the building construction activity may provide for regulations as to floor area, the number of floors, the extent of height rise and the nature of use to which a built-up property may be subjected in any particular area. The individuals as property owners have to pay some price for securing peace, good order, dignity, protection and comfort and safety of the community. Not only filth, stench and unhealthy places have to be eliminated, but the layout helps in achieving family values, youth values, seclusion and clean air to make the locality a better place to live. Building regulations also help in reduction or elimination of fire hazards, the avoidance of traffic dangers and the lessening of prevention of traffic congestion in the streets and roads. Zoning and building regulations are also legitimised from the point of view of the control of community development, the prevention of overcrowding of land, the furnishing of recreational facilities like parks and playgrounds and the availability of adequate water, sewerage and other governmental or utility services.

24. Structural and lot area regulations authorise the municipal authorities to regulate and restrict the height, number of storeys and other structures; the percentage of a plot that may be occupied; the size of yards, courts and open spaces; the density of population; and the location and use of buildings and structures. All these have in our view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any

violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building. (emphasis supplied)”

12. Ultimately, in Paragraph 9 of the said decision, the Apex Court held thus:

“9. We have prefaced disposal of this appeal by taking cognizance of the precedents in which this Court held that there should be no judicial tolerance of illegal and unauthorized constructions by those who treat the law to be their subservient, but are happy to note that the functionaries and officers of Kolkata Municipal Corporation (for short, ‘the Corporation’) have been extremely vigilant and taken steps for enforcing the provisions of the Kolkata Municipal Corporation Act, 1980 (for short, ‘the 1980 Act’) and the rules framed thereunder for demolition of illegal construction raised by respondent No.7. This has given a ray of hope to the residents of Kolkata that there will be zero tolerance against illegal and unauthorised constructions and those indulging in such activities will not be spared.”

(underline supplied)

13. This is not a case where a common man has erected a small structure. This is a case of a professional builder who has high-handedly proceeded to construct seven buildings consisting of ground plus three floors in a most brazen manner. Therefore, in writ jurisdiction under Article 226 of the Constitution of India, no relief can be granted to the Petitioner.

14. The third Respondent Village Panchayat has purported to grant building permissions and has purported to grant building completion certificates on 3rd June 2013 and 30th July 2013. The State Government will have to look into the role played by the Village Panchayat and its Sarpanch. By letter dated 15th April 2013, the second Respondent informed the Sarpanch of the said Village about the Notification dated 10th January 2013. In fact, the second Respondent called upon the Sarpanch to submit necessary data.

15. Therefore, it is necessary that the State Government should inquire into the affairs of the third Respondent and role played by Sarpanch and take action in accordance with law.

16. Accordingly, we pass the following order.

ORDER :

- (a) The Petition is rejected;
- (b) In light of the observations made in the judgment and order, the State Government shall initiate appropriate proceedings against the third Respondent and its Sarpanch in accordance with law.

- (c) No order shall be passed against the Sarpanch without being given an opportunity of being heard to him.

(VIBHA KANKANWADI, J)

(A.S. OKA, J)