

Rane

* 1/7 * WP-14094-2017 (SR.903)
Friday, 22.12.2017

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14094 OF 2017

Rameshwar Radheshyam ManiyarPetitioner

V/s.

The State of Maharashtra and Ors.Respondents

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Mr. M.L. Patil, Advocate for the petitioner.

Mr. A.B. Vagyani, GP for the respondent, State.

CORAM :- R.M. SAVANT &

SANDEEP K. SHINDE, JJ.

DATE :- 22ND DECEMBER, 2017.

P.C. :-

1. The above writ petition has been filed under Article 226 of the Constitution of India for quashing and setting aside the report dated 27th October, 2017 and the approval thereto on 1st November, 2017 by the City Engineer, Pune Municipal Corporation. By the said report, it is recommended that the stop-work notice

issued under Section 267(1) of the Maharashtra Municipal Corporations Act, be withdrawn. The said report has been endorsed by the City Engineer on 1st November, 2017. As a consequence of the said report and the approval thereto by the City Engineer, the road to carry out construction by the respondent no.4 has been cleared.

2. It is an undisputed position that, the petitioner was an Architect engaged by the respondent no.4 for the purposes of formulating plans and submitting the same to the Pune Municipal Corporation for developing the property in question pursuant to the Development Agreement, which the respondent no.4 had in its favour in respect of the property on which an old structure was situated. It seems that the petitioner had propounded a particular course of action to be followed in the matter of carrying out development of the said property which it seems was not agreeable to the respondent no.4. The disagreement was revolving around the lapsing of the development permission which was granted under Section

48 of the Maharashtra Regional Town Planning Act and which lapses after a period of one year. The record discloses that, correspondence ensued between the petitioner and the respondent no.4 who were his clients, as also, the petitioner and the Planning Authority i.e. Pune Municipal Corporation. It seems that a new set of Development Control Regulations also came into force, as a result of which, according to the petitioner, the development could only be carried out in terms of the said revised Development Control Regulations, in view of the fact that, development had not commenced within one year of the development permission being granted under Section 48 of the Maharashtra Regional Town Planning Act. The averments in the plaint also indicate an undercurrent of a dispute as regards the payment of the petitioner's fees as an Architect by the respondent no.4. The question therefore that arises is, whether at the behest of the petitioner who seeks to point out the alleged unauthorised construction being carried out by the respondent no.4, that the above petition is required to be

entertained. The aspect of the professional ethics of the petitioner as an Architect would also come into consideration, in so far as, the locus-standi of the petitioner to file the above petition is concerned.

3. The Learned Counsel appearing for the petitioner, faced with this situation, draws our attention to the order dated 8th February, 2011 passed by the Division Bench of this Court in *Writ Petition No. 2244 of 2010 and Public Interest Litigation No. 80 of 2010 in the matter of Balaji International School V/s. Mumbai Municipal Corporation of Greater Mumbai and Others and Brij Bhushan Jaiswal V/s. The State of Maharashtra and Ors.* respectively. The said order is by way of an ad-interim order, as can be seen from a reading of the said order, the Division Bench was concerned with the disputes of illegal and unauthorised construction de-hors the development permission being carried out and since disputes of such a nature were coming up before it regularly, with a view to see that such aspect can be cured and no further illegal construction may take place, the

Division Bench deemed it fit to issue notice to the Council of Architects, New Delhi, as well as, the concerned Architect who was instrumental in carrying out the unauthorised construction. A reference in the said order is also made to the Circulars issued by the Municipal Corporation, which Circulars provide that, if the work is carried out beyond the approvals/C.C. granted and if the Architect/Licensed Surveyor has not made any attempts to stop his client from carrying out such work, suitable action will follow against such erring Licensed Surveyor and Architect including suspension of license. The said order is sought to be relied on behalf of the petitioner to contend that, since ultimately, the petitioner would be made responsible, that the petitioner has approached this Court to point out the alleged illegal construction. It is also required to be noted that the said order itself provides that, if the concerned Architect/Licensed Surveyor informs that he is withdrawing from the project as his client has refused to stop the work and to follow the procedure, then no action may be taken against such

Architect/License Surveyor. In our view, the said observation is eloquent in so far as the petitioner is concerned.

4. In the said context, it is required to be noted that correspondence had ensued between the petitioner and the respondent no.4 which has ultimately resulted in the services of the petitioner as an Architect being terminated by the respondent no.4 on 29th November, 2016 vide letter of the said date; against which it is stated by the Learned Counsel that the petitioner has taken recourse. Prima-facie, the apprehension of the petitioner that he would be made responsible is misplaced, in view of the fact that the correspondence between the petitioner and the Pune Municipal Corporation, as well as, the correspondence between the petitioner and the respondent no.4 discloses the petitioner's protestations as regards the construction being carried out by the respondent no.4 and as indicated above ultimately resulting in the petitioner's termination as an Architect by the respondent no.4 on 29th November, 2016. For the

reasons aforesated, we are of the view that the above petition seeking the relief sought cannot be entertained at the behest of the petitioner, as also we do not deem it appropriate to exercise our writ jurisdiction at his behest. It is therefore not necessary to examine the merits of the case of the petitioner. The Writ Petition is accordingly dismissed. We, however, clarify that the dismissal of the instant petition should not be construed as any expression of opinion of this Court, as regards the legality or otherwise of the construction being carried out by the respondent no.4. The said aspect is kept open for being gone into in appropriate proceedings.

(SANDEEP K. SHINDE, J)

(R.M. SAVANT, J)