

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1336 OF 2003

Jaikrishan Thadharam Vatnani.

.. Petitioner

Vs

The Municipal Corporation of Greater Mumbai
and Others.

.. Respondents

—

Shri Shilpan Gaonkar along with Ms. Tejal Pandya i/b M/s.Ashwin
Pandya & Associates for the Petitioner.

Ms.Vandana Mahadik for the Respondents.

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

DATED : 23RD JUNE 2017

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

1 Heard learned counsel appearing for the Petitioner and the
learned counsel appearing for the Respondents.

2. The Petitioner is a Surveyor to whom a license under
Section 355 of the Mumbai Municipal Corporation Act, 1888 (for short
“the said Act”) was granted. The Petitioner was appointed for the
purposes of constructing a building on a plot of land held by one Shri
Suresh N. Goradia and another. The Petitioner applied for grant of
development permission which was granted by the Mumbai Municipal
Corporation. A commencement certificate was issued on 9th February

1993. A part occupation certificate upto the 3rd floor was granted by the Municipal Corporation on 15th April 2002.

3. A show cause notice dated 13th March 2003 was issued by the Mumbai Municipal Corporation- first Respondent to the Petitioner. Certain defaults and breaches were set out by the first Respondent in the said notice. The Petitioner was called upon to show cause in writing within a period of 7 days as to why disciplinary action against him should not be taken. The defaults and breaches set out in the notice read thus:

- “1. though, the developer Shri Suresh Goradia is a Lessee, you have shown to the MCGM as a owner.
2. you have not carried out the work as per approved plans.
3. though, work is carried out beyond approved plan on site, you have not bothered to get the amended plan approved as per the site conditions.
4. you have submitted incorrect plans which do not tally with the work actually carried out on site.
5. you have not disclosed the fact that the Stop Work Notice had been issued in 1996.”

4. The Petitioner replied to the show cause notice by his reply dated 15th March 2003. The first Respondent Corporation responded to the said reply by addressing a letter dated 17th April 2003 to the

Petitioner. By the impugned order/communication dated 30th April 2003, the licence granted to the Petitioner under Section 355 of the said Act was suspended for the reasons cited in the aforesaid show cause notice. However, the period of suspension was not mentioned in the impugned order. It is this order which is the subject matter of challenge in this Petition.

5. On 17th June 2003, this Court granted interim relief of stay to the impugned order while issuing Rule. Learned counsel appearing for the Petitioner states that in view of the grant of stay, the license granted to the Petitioner was renewed during the pendency of the Petition and now it was renewed upto 2021. The said license was renewed specifically subject to the outcome of the present Petition.

6. The submission of the learned counsel appearing for the Petitioner is that firstly the impugned order is illegal as the same shows that the reply filed to the show cause notice by the Petitioner is not at all taken into consideration. Secondly, the submission is that the order of suspension cannot be made operative for an indefinitely long time and the impugned order does not mention the period for which the license granted to the first Petitioner will remain in suspension. The learned counsel appearing for the Petitioner, however, pointed out that the statement made in paragraph 8 of the reply filed by Shri Vijayanand

Bhavanishankar Mudur, the Assistant Engineer, B.P. (WS) which is dated 11th June 2003. In Paragraph 8, he has stated that the tenure of suspension was of two years from the date of suspension order.

7. The learned counsel appearing for the Respondents supported the impugned order. Her submission is that though grounds may not have been specifically stated in the impugned order of the Deputy Chief Engineer, Building Proposal (Western Suburbs), the same have been stated in the show cause notice. She, therefore, submitted that no interference is called for.

8. We have given careful consideration to the submissions. We have already quoted the five grounds on the basis of which, a show cause notice was issued. In the reply to the show cause notice, as regards the first ground, the Petitioner stated that Shri Suresh Goradia is a Lessee of the land, but he is the owner of the building. He has stated that necessary correction has been made in the amended plan already submitted and a separate clarification has been submitted by Shri Suresh Goradia. As regards the second ground, the Petitioner denied that the work is not carried out as per the approved plan. It is further stated that the commencement certificate and occupation certificate have been issued by the Mumbai Municipal Corporation after due verification of the site. As regards the third ground, he has stated

that for the work which is carried out beyond the approved plan and the commencement certificate, amended plans were submitted on 9th December 2002. The fourth ground in the show cause notice is that the incorrect plans were submitted by the Petitioner which do not tally with the work actually carried out on the site. This ground is vague and no particulars have been set out. It is not stated as to how the plans submitted by the Petitioner were incorrect. In response to the said ground, the Petitioner stated that the building is constructed as per the approved plan and there is no violation of FSI. As regards the fifth ground regarding the suppression of stop work notice issued in the year 1996, the response of the Petitioner is that he does not remember now whether any notice was issued in the year 1996. He pointed out that after the year 1996, further commencement certificate has been issued and the work was carried out as per the plans which was certified by the officers of the Municipal Corporation. The Petitioner also relied upon his letter dated 9th December 2012.

9. The Deputy Chief Engineer of the Municipal Corporation has responded by his letter dated 17th April 2003. It is reiterated therein that the work carried out on the site was deviating from the approved plans. Though it is stated in the letter that as per the office record, the notice under Section 354A of the said Act was issued on 1st July 1996, it is not stated whether the stop work notice was served to

the Petitioner or the Petitioner's client or that the Petitioner had knowledge about the said stop work notice. Further, it is stated that the owner of the building cannot relieve himself from the responsibility of carrying out the work.

10. Though a detailed reply was submitted by the Petitioner on 15th March 2003, which was replied by the Municipal Corporation, all that the impugned order records is that the licence of the Petitioner was suspended for the reasons cited in the show cause notice dated 13th March 2003 and the aforesaid letter dated 17th April 2003. There is not even a reference to the reply submitted by the Petitioner though the letter dated 17th April 2013 refers to the said reply. The impugned order does not reflect that the contents of the reply were considered by the Deputy Chief Engineer of the Municipal Corporation. The impugned order is a drastic order by which the license granted to the Petitioner to act as a Licensed Surveyor was suspended and that also without mentioning the outer limit. Even assuming that the period of the order is of two years from the date of the order, such a drastic order affecting the rights of the Petitioner could not have been passed without recording any reasons. Moreover, the impugned order shows a complete non-consideration of the reply filed by the Petitioner to the show cause notice. Thus, there is a non-application of mind which vitiates the impugned order.

11. Therefore, we have no option but to set aside the impugned order/notice dated 30th April 2003. Accordingly, we pass the following order:

ORDER :

- (a) The impugned order/notice dated 30th April 2003 is hereby set aside;
- (b) This order will not prevent the Respondent Municipal Corporation from passing a fresh order on the basis of the show cause notice dated 13th March 2003. However, before passing any order on the said show cause notice, the concerned officer of the Municipal Corporation shall grant permission to the Petitioner to file additional documents and shall give an opportunity of being heard to the Petitioner;
- (c) Rule is made partly absolute on the above terms.