

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION (L) NO. 63 OF 2016

Janseva Vikas Samiti	.. Petitioner
V/s	
The Collector, Mumbai Suburban District & Ors.	.. Respondents

Mr. Samrat Shinde for the petitioner.
Mr. P.K. Dhakephalkar, Senior Advocate with Mr. Sachin Punde for respondent no.8.
Mr. Anoop Patil for respondent no.5.
Ms. Shobha Ajithkumar for the Corporation.
Ms. Geeta Shastri, AGP for the State.

**CORAM: DR. MANJULA CHELLUR, CJ. &
G.S. KULKARNI, J.**

DATE : 10th MARCH 2017

P.C.:

In pursuance of our earlier directions, the Court Commissioner (Member Secretary of the High Court Legal Services Authority) has placed a report on the file of this petition, inter alia, recording the observations of the Structural and Geo-Technical Expert. The Geo-Technical Expert has made the following recommendations:

“Precautionary measures in the form of shoring piles with anchors, and anchor blocks are observed, however further data/ design/analysis as stated below is necessary to comment upon the adequacy of the precautionary measures.

- 1. The strata observed in the site were highly weathered and not conforming with the report available for the reference. It is therefore recommended to drill four confirmatory boreholes such that two boreholes in the part of the plot (Vikhroli side) where GL is excavated 5 to 6 m below existing GL and remaining in the space between existing old retaining wall and foot of hill. Based on the borelog data slopes stability calculations for retaining structures may have to be rechecked.*
- 2. The design and construction details of R.C.C. Compound (retaining) wall adjacent to the temporary structures on hill top should be made available for assessing its stability.*
- 3. The global slope stability of the entire area running from the road side to top of the hill including flat terrain beyond the temporary structures on the hill top; should be obtained. In case of failure of such slope stability some additional measures must be proposed and implemented for restoring global hill stability.*
- 4. Proper network of drainage in the flat area on the hill top including temporary structures should be planned so that it will help in maintaining stability of the hill.*

5. *The above recommendations and corresponding additional measures shall have to be executed on priority; and completed well before onset of monsoon.”*

In addition to the observations of the Geo-Technical Expert, the report records the measurement, which was undertaken by the City Survey Officer, in the following terms:

“In order to ascertain as to whether the Respondent/ Builder has undertaken the construction in his land, the City Survey Officer was requested to measure the disputed plot in presence of the concerned. The land was accordingly surveyed in presence of the parties and they have submitted their report alongwith map of plot surveyed. The report alongwith the map is marked at Ex 'C' to the report.

On perusal of the map it is seen that the City Survey Officer had fixed the boundary of the disputed plot in red ink in the map. Compound wall boundary by the builder is shown in blue ink parallel lines. The City Survey Officer in his measurement has found that the portion shown in blue ink, in the map, is beyond the plot of respondent/builder and is part of the hill and the same is decorated by the builder. Thereby it appears that while doing so there is an encroachment on the adjoining Government land i.e. part of C.T.S. No.1. The compound wall on the western side shown in blue ink parallel lines falls outside the plot of respondent/builder.”

2. According to the City Survey Officer, as noted above, it is found that the portion of land in blue ink in the map is beyond the plot of the respondent builder. It is part of the hill. It is recorded that there is an encroachment on the adjoining Government land, i.e. part of CTS No.1, and a compound wall on the western side shown in “*blue ink parallel lines*” falls outside the plot of the respondent builder.

3. Mr. Dhakephalkar, learned Senior Counsel for respondent no.8, submits that his clients are willing to set right the deficit made by the City Survey Officer, and as noted by us above, by constructing a compound wall in accordance with the actual measurement undertaken by the City Survey Officer. He submits that appropriate action to comply with the findings of the Geo-Technical Expert and the City Survey Officer would be taken within a period of 3 months from today. Statement is accepted.

4. Having considered the above report of the Court Commissioner and the orders passed in this petition from time to time, we see that the grievances of the petitioner in the following prayers are well taken care of:

“a. *This Hon'ble Court by its appropriate writ, order or direction in the nature of Mandamus may kindly be pleased to restrain the Respondent No.6 to carry out*

further development, construction, illegal cutting of hill, trees and excavation in C.T.S. No.1/9A (pt), (Plot No.5);

- b. This Hon'ble Court by its appropriate writ, order or direction in the nature of Mandamus may kindly be pleased to direct the appropriate authority to decide the representation dated 26.2.2016 made by the Petitioner which is annexed at Exhibit 'A' to the memo of this Petition;*
- c. This Hon'ble Court by its appropriate writ, order or direction in the nature of Mandamus may kindly be pleased to direct the Respondent No.6 to restore the status quo ante;*
- d. This Hon'ble Court by its appropriate writ, order or direction in the nature of Mandamus may kindly be pleased to direct the Respondent No.7 to initiate enquiry into the decision making process of granting permission to the Respondent No.6 to carry out hill cutting and excavation in C.T.S. No.1/9A (pt), (Plot No.5), Ghatkopar, Mumbai.”*

5. As regards prayer clause (a), the anxiety of the petitioner of any further development, construction, illegal cutting of hill, trees and excavation in C.T.S. No.1/9A (pt), (Plot No.5) has been sufficiently addressed by this Court and appropriate measures are

taken by the authorities in pursuance of the directions of this Court. As regards prayer clause (b), which seeks a direction to decide the representation dated 26th February 2016, in view of our orders and the report of the Court Commissioner, this prayer would not survive. As regards prayer clause (c), which is for a direction that respondent no.6 shall maintain status quo ante, this prayer cannot be granted in a petition under Article 226 of the Constitution of India. In any event, appropriate measures are taken by the authorities to see that there is no illegality of any nature in destroying the hill or cutting of the trees. As regards prayer clause (d) which pertains to initiation of inquiry into the decision making process of granting permission to respondent no.6 to carry out hill cutting and excavation in CTS No.1/9A (Part), (Plot No.5), Ghatkopar, Mumbai, we do not intend to go into these reliefs and leave it open to be pursued by the petitioner before the appropriate authorities to examine this issue as it would involve an enquiry on facts. In this regard, contentions of the parties are expressly kept open.

6. On behalf of the petitioner, a further affidavit, which takes exception to the report dated 5th January 2017 of the Court Commissioner, is tendered across the Bar today. There are various contentions which are raised including contention that CTS Nos.1/9A1 and 1/9A2 falls in “no development zone” which initially was not the case of the petitioner in the petition as also in the prayers. It is submitted that the petitioner would secure further

documents in support of its submissions. We do not accept the submissions made on behalf of the petitioner. If the petitioner has any further legitimate grievance which will give a fresh cause of action, the petitioner is at liberty to pursue the same in an appropriate proceeding before the appropriate authority.

7. In view of the above discussion, we are of the opinion that this petition does not warrant any further adjudication. The PIL is accordingly disposed however subject to the above observations with no order as to costs.

8. Mr. Dhakephalkar, learned Senior Counsel for respondent no.8, submits that the costs for inspection has been deposited by his clients and if any costs remains to be paid, the same will be deposited within a period of 6 weeks, if so demanded.

(G.S. KULKARNI, J.)

CHIEF JUSTICE