

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9320 OF 2017

Santosh Arun Udawant. ...Petitioner

-versus-

M/s Saikrupa Constructions and
Developers, Ahmednagar and others. ...Respondents

...

Shri R.F.Totala h/f Ms.S.A.Nirban, Advocates for the Petitioner.

Shri V.D.Sapkal, Advocate for Respondent Nos.1 to 10.

Shri V.S.Bedre, Advocate for Respondent No.11.

...

WITH

WRIT PETITION NO.9324 OF 2017

Gorakh Digambar Mundalik. ...Petitioner

-versus-

M/s Saikrupa Construction and
Developers, Ahmednagar and others. ...Respondents

...

Shri R.R.Mantri, Advocate for the Petitioner.

Shri V.D.Sapkal, Advocate for Respondent Nos.1 to 10.

Shri V.S.Bedre, Advocate for Respondent No.11.

...

WITH

WRIT PETITION NO.1108 OF 2018

Pramod Laxman Lolge. ...Petitioner

-versus-

M/s Saikrupa Construction and
Developers, Ahmednagar and others. ...Respondents

...

Shri Ganesh S. Yadav, Advocate for the Petitioner.

Shri V.D.Sapkal, Advocate for Respondent Nos.1 to 10.

Shri V.S.Bedre, Advocate for Respondent No.11.

...

**WITH
WRIT PETITION NO.2839 OF 2018**

Yogesh Bhagirat Mundlik. ...Petitioner
-versus-
M/s Saikrupa Construction and
Developers, Ahmednagar and others. ...Respondents

...

Shri Ganesh S. Yadav, Advocate for the Petitioner.
Shri V.D.Sapkal, Advocate for Respondent Nos.1 to 10.
Shri V.S.Bedre, Advocate for Respondent No.11.

...

CORAM: RAVINDRA V. GHUGE, J.

**Reserved on : 07th June, 2018.
Pronounced on : 22nd June, 2018.**

JUDGMENT :

1 In all these identical petitions, the Petitioners/ original Plaintiffs are aggrieved by the judgment and orders delivered by the Appellate Court by which, the original Plaintiffs have been refused temporary injunction. The Trial Court had granted temporary injunction to the Plaintiffs and the said orders were quashed and set aside by the Appellate Court.

2 For the sake of clarity, the details as regards these four petitioners, their civil suit numbers, dates of orders by the Trial Court, appeals filed by the Defendants and the impugned judgments of the

Appellate Court are as under :-

Sr. No.	Name of Petitioner	Writ Petition No.	RCS No.	Trial Court's order	MCA No.	Appellate Court's order
1	Santosh Arun Udawant	9320/2017	25/2017	20.03.2017	4 of 2017	12/07/17
2	Gorakh Digambar Mundlik	9324/2017	19/2017	20.03.2017	5 of 2017	12/07/17
3	Pramod Laxman Lolge	1108/2018	24/2017	14.06.2017	10 of 2017	04/09/17
4	Yogesh Bhagirat Mundlik	2839/2018	22/2017	20.03.2017	6 of 2017	12/07/17

3 By the consent of the parties, these petitions have been taken up together. The two writ petitions bearing Nos.1108/2018 and 2839/2018 having been tagged with the earlier petitions filed in 2017, have also been taken up for hearing along with the 2017 petitions.

4 The learned counsel for the Petitioners have contended that they preferred various civil suits before the Trial Court with regard to Survey No.624 in relation to various plots which are known as Final Plots. The Defendants in all these matters are the construction company and the Shrirampur Municipal Council. The Plaintiffs contended that the said construction company was commencing construction of a ground floor for residential purposes and first floor for commercial purposes. The said construction is in violation of the Rules applicable and will affect their legal rights.

5 The Plaintiffs contended that the commencement of the

construction is likely to damage the old construction of the shops of the Plaintiffs. The construction is being erected at a distance of about 3 feet from the backside wall of the shops of the Plaintiffs. Columns are being erected at a distance of 3 feet. Safety measures or safeguards have not been taken by the defendants. There is no partition between the construction and the suit property and the Plaintiffs have serious apprehension that their shops, which are constructed with the use of soil, stones, bricks and tin roofs, are likely to collapse.

6 The Plaintiffs realized that there are several lacunas and faults in the construction plan of the defendants. The commercial use of the landed property exceeds 500 square meters and the construction, therefore, is covered under the definition of "special building". The Rules mandate that the side margins must be at least 6 meters and this has been violated by the defendants.

7 It is then canvassed that Section 45 of the Maharashtra Regional and Town Planning Act, 1966 (for short "the MRTP Act") has been violated. Section 69(1)(b)(i) clearly indicates that the permission of the Arbitrator in respect of the draft scheme has to be taken and that has not been taken. There is no approval from the Arbitrator to the construction commenced by the defendants.

8 Reliance is placed on the judgments delivered by the Honourable Apex Court in the matters of Ram Sarup Gupta vs. Bishun.

Narain Inter College and others, AIR 1987 SC 1242, Wander Limited vs. Antox India P. Ltd., 1990 (Supp) SCC 727, Makers Development Services Pvt. Ltd. vs. M. Visvesvaraya Industrial Research and Development Centre, 2012 (3) Mh.L.J. 75 (SC) and the judgments of this Court in the matters of Venkat Dharmaji Gontalwar vs. Vishwanath and another, AIR 1983 Bombay 412 and Syed Gurfan s/o Syed Burhan vs. Rekha Ramdas Pande and others, 2018 (3) Mh.L.J. 118.

9 The learned Advocate for the defendants construction company submits that though the Petitioners have canvassed through their oral submissions as regards the alleged illegality in the construction permission and the absence of the approval of the Arbitrator, there are no pleadings in the entire plaints filed by these Plaintiffs/ Petitioners. Without any pleadings on record and without any averments, the plaintiffs have suddenly raised disputed questions in these writ petitions. This Court, while exercising its revisional or writ jurisdiction, cannot entertain disputed questions and more so, when there are no pleadings by the plaintiffs in their plaints.

10 As regards the maintainability of the suit is concerned, reliance is placed upon the observations of this Court in Satish Gayacharan Trivedi vs. Gopal Ramnarayan Mundhada (Dr.) and others, 2015 (4) Bom. C.R. 626, whereby, this Court has concluded that the grant

of permission as per the sanctioned plan, cannot be a subject matter of the civil suit.

11 In Satish Gayacharan Trivedi (supra), it is held in paragraph Nos.11, 12 and 13 as under :-

- "11. From aforesaid, it is, therefore, clear that if any notice or order issued under said Act by any authority is sought to be challenged before the Civil Court, then in view of the finality given to such order passed or notice issued, the jurisdiction of the Civil Court would be ousted. However, if any action sought to be taken under said Act is alleged to be null and void and sought to be taken without even issuing any notice or passing any order, then the jurisdiction of the Civil Court is not ousted and the Civil Court can examine the validity of such action which is alleged to be null and void. Similarly, the plaint must contain all statements of material facts that are necessary to invest such jurisdiction with the Civil Court.
12. The petitioner while invoking the jurisdiction of the Civil Court has pleaded that grant of sanction by the Municipal Corporation was contrary to the Rules, Regulations and Building Bye-laws. It was also pleaded that the construction, if carried out, would result in causing nuisance to the residents. Certain technical violations were also pleaded while attacking the sanctioned plan. There are no averments challenging authority of the Municipal Corporation to grant sanction for the construction undertaken by the respondent Nos.1 to 3. The entire foundation of the petitioner's action is that the sanction as granted by the respondent No.4 is contrary to law. According to the petitioner, there is no statutory remedy available to him for challenging grant of sanction under Section 45 of the said Act. Hence, according to the petitioner, as the remedy of appeal under Section 47 of the said Act cannot be invoked by him, the only remedy available was to approach the Civil Court. Under

Section 149 of the said Act, every order passed or notice issued by any Authority under said Act is final and cannot be questioned in any suit or other legal proceedings. Non-availability of a statutory remedy to challenge an order passed or notice issued under provisions of said Act by itself cannot be held to be the determinative factor for conferring jurisdiction on the Civil Court especially when such jurisdiction has been expressly barred by provisions of Section 149 of the said Act. At this stage, provisions of Section 51 of the said Act need to be noticed. Said provision empowers the Planning Authority to revoke or modify any permission granted or deemed to be granted under the said Act to develop land. As held by the Division Bench in *Digambar Sakharam Tambolkar Vs. Pune Municipal Corporation and others* 1987 Mh.L.J. 419, the expression "permission granted under this Act or any other law" is wide enough to cover all kinds of permission granted to develop land. A person aggrieved by any permission to develop land can always move the Planning Authority to revoke or modify such permission. Hence, it cannot be said that no remedy whatsoever is available to a person who seeks to revoke or modify such permission. For aforesaid reasons, said submission cannot be accepted.

13. The trial Court while deciding the preliminary issue as regards jurisdiction of the Civil Court has, therefore, rightly found that the Civil Court had no jurisdiction to go into the validity of permission granted by the planning authority as per the sanctioned plan. It has further rightly found that the Civil Court had jurisdiction to the extent of examining whether the construction carried out by the respondent Nos.1 to 3 was contrary to the sanctioned plan."

12 Further, reliance is placed upon the judgment of this Court in the matter of Prashant Dattatraya Wazalwar vs. Smt.Sudha Baburao

Lokhande and others, 2018 (3) ALL MR 400, wherein, it is held that the civil court would not have jurisdiction in view of the bar of jurisdiction under Section 149 of the MRTP Act.

13 Since the suits are pending and the Trial Court would surely frame issues on the basis of the pleadings of the parties, I deem it inappropriate to deal with the issue of the maintainability of the suits filed by these petitioners, in these petitions. The said issue can be left open for the Trial Court to consider on its merits.

14 Insofar as the construction commenced by the defendant construction company is concerned, the learned counsel for the Municipal Council (Respondent No.11) submits that a substantial construction has been caused by the construction company. The learned counsel for the construction company submits that an amount of Rs.1,05,00,000/- has already been spent. It was on account of the injunction that was granted by the Trial Court, that the construction had to be halted. Reliance is placed upon the judgment of the Honourable Apex Court in the matter of Mandali Ranganna and others vs. T. Ramachandra and others, AIR 2008 SC 2291, wherein, it is concluded that while considering an application for grant of injunction, the court will not only take into consideration the basic elements in relation thereto, viz. existence of prima facie case, balance of convenience and an irreparable injury, but must also take into consideration the conduct of the parties. It is informed by the Municipal

Council that all these Petitioners are facing eviction and demolition of construction of their shops since they are said to be illegally erected. They have initiated litigation on this count and the matters are sub-judice. The present litigation has been initiated by these petitioners as a counter blast keeping in view their earlier litigation in view of the possibility of their shops being demolished.

15 In Mandali Ranganna (supra), the Honourable Apex Court has concluded in paragraphs 21 to 24 as under :-

"21. *Emphasis was also laid on the conduct of the parties while granting an order of injunction.*

22. *In Seema Arshad Zaheer and Others v. Municipal Corpn. Of Greater Mumbai and Others [(2006) 5 SCC 282], this Court held:*

"30. *The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff: (i) existence of a prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of the plaintiff's rights is compared with or weighed against the need for protection of the defendant's rights or likely infringement of the defendant's rights, the balance of convenience tilting in favour of the plaintiff; and (iii) clear possibility of irreparable injury being caused to the plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands."*

[See also Transmission Corpn. of A.P. Ltd. v. Lanco Kondapalli Power (P) Ltd. (2006) 1 SCC 540]

23. *Rightly or wrongly constructions have come up. They*

cannot be directed to be demolished, at least at this stage. Respondent No.7 is said to have spent three crores of rupees. If that be so, in our opinion, it would not be proper to stop further constructions.

24. *We, therefore, are of the opinion that the interest of justice would be subserved if while allowing the respondents to carry out constructions of the buildings, the same is made subject to the ultimate decision of the suit. The Trial Court is requested to hear out and dispose of the suit as early as possible. If any third party interest is created upon completion of the constructions, the deeds in question shall clearly stipulate that the matter is subjudice and all sales shall be subject to the ultimate decision of the suit. All parties must cooperate in the early hearing and disposal of the suit. Respondents must also furnish sufficient security before the learned Trial Judge within four weeks from the date which, for the time being, is assessed at Rupees One Crore."*

16 I find from the impugned orders of the Appellate Court that the aforesaid issues have been considered. It is also held that if there is any violation of the building bye-laws or any enactments, the Municipal Council would be within its rights to initiate action against the construction company. Though the plaintiffs have tried to make out a prima facie case that they are affected by the construction, the record available does not support the said contention. Prima facie, their easementary rights like air, light and their ingress and egress are not affected by the construction since the side margins are three meters which is about 9 feet 9 inches. In my view, the Appellate Court has rightly set

aside the orders passed by the Trial Court clamping injunction on the construction of the defendants. I do not find that the impugned orders of the Appellate Court could be termed as being perverse or erroneous in view of the law laid down by the Honourable Apex Court in Mandali Ranganna (supra).

17 Considering the above, all these Writ Petitions are devoid of merits and stand dismissed.

18 After pronouncement of this judgment today, the learned Advocate for the Petitioners requested the learned Advocate for the Defendant Construction Company to continue the statement of maintaining status-quo till the suit is decided or for four weeks.

19 The learned Advocates for the Defendant Construction Company and the Defendant Municipal Council submit that the statement in fact was not in force when these matters were heard by this Court. In any case, they are not agreeable to continue the said statement.

20 As such, no orders on this request.