

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

935 WRIT PETITION NO.10123 OF 2017

DIGVIJAY DILIPRAO DESHMUKH THROUGH POWER OF
ATTORNEY HOLDER DILIPRAO LALASAHEB DESHMUKH
VERSUS
MUNICIPAL COUNCIL OSMANABAD THROUGH CHIEF OFFICER

...

Advocate for Petitioner : Mr. VD Salunke, Adv.
h/for Mr. Syed G R
Mr. Deshmukh Vivekanand B., Adv. For Respondent.

CORAM : P.R.BORA, J.

DATE : 4th April, 2018.

PER COURT :

1) Learned Counsel for petitioner tendered across the Bar additional affidavit on behalf of the petitioner annexed with certain documents thereto. The same is taken on record. A copy of the same is already supplied to the counsel for respondent.

2) Heard learned Counsel for the petitioner and respondent at length.

3) From the record it is revealed that a layout was sanctioned by Respondent - Municipal

Council, Osmanabad in respect of Survey No. 103/1. In the sanctioned layout, two roads were shown, one was 10 meters wide and another was 12 meters wide. The sanctioned layout demonstrates that adjacent to 12 meters wide road, there were two plots, bearing plot Nos.34 and 35. It is further revealed that a notice came to be issued by Respondent Municipal Council on 5th March, 2015 whereby the Chief Officer of the Municipal Council had called upon the petitioner to remove construction of western side compound wall, which according to the Municipal Council, was constructed on the space shown as road in the layout and which was subsequently purchased by the Municipal Council. Thereafter another notice came to be issued on 13th July, 2017 whereby the petitioner was called upon to demolish the structure/building constructed in Survey No.103/1.

4) After receiving the notice dated 5th March, 2015 the petitioner filed a civil suit bearing Regular Civil Suit No.686/2015 for

permanent injunction, restraining the respondent Municipal Council from dismantling/demolishing the construction and changing nature of the suit property. In the said civil suit, an application was also filed seeking temporary injunction.

5) The learned Trial Judge rejected the said application vide order passed on 17th March, 2016. The petitioner preferred Misc. Civil Appeal No.29/2016 before the District Court at Osmanabad. The learned Ad hoc District Judge-2, vide the order passed on 7th August, 2017, dismissed the said Misc. Civil Appeal. Aggrieved by, the petitioner has filed the present writ petition.

6) It was the contention of Shri V.D.Salunke, learned Counsel appearing for the petitioner, that in view of the Notification issued by the State Government on 7th August, 2017, the petitioner can avail an opportunity to pray for compounding the irregularities occurred in the construction carried out by the petitioner and get pardoned the same from the Municipal

Council. Learned Counsel submitted that such application has been already preferred by the petitioner.

7) The learned Counsel appearing for the respondent - Municipal Council submitted that the compound wall has been constructed on the space which has been shown as approach road in the approved layout and, therefore, the notice dated 5th March, 2015 was issued calling upon the present petitioner to remove that obstruction and make open the access from the said road. The learned Counsel further submitted that construction of Marriage Hall is altogether a different issue and that can be dealt with separately. The learned Counsel further submitted that the revised layout was also submitted by the petitioner and the Municipal Council has rejected the said revised layout, vide communication dated 6.9.2016, however, order rejecting the revised layout has not been challenged by the petitioner.

8) On such submissions made on behalf of

the Municipal Council, learned Counsel Shri Salunke, on instructions, submitted that the petitioner may be permitted to withdraw the present writ petition with liberty to challenge the said order whereby the Municipal Council has rejected the revised plan submitted by the petitioner and also to challenge the notice dated 13.7.2017 whereby the demolition is directed of the construction of Mangal Karyalaya viz. Chhayadip Lawns.

9) The request so made has been opposed by the learned Counsel for the respondent Municipal Council. The learned Counsel submitted that unless the obstruction to the road is removed by the petitioner, no such equitable relief can be granted to the petitioner. The learned counsel further submitted that notice dated 17th March, 2017 has also not been challenged by the petitioner.

10) Eventually, Shri V.D.Salunke, learned Counsel appearing for the petitioner, submitted that as was called upon by the Municipal Council,

vide its notice dated 5th March, 2015, the petitioner undertakes to remove the construction of the compound wall allegedly made on the approach road and seeks liberty to challenge rejection of the revised layout plan by the Municipal Council by taking out appropriate proceeding in that regard and also to challenge the notice dated 13th July, 2017 whereby the demolition is directed of the construction of Mangal Karyalaya, viz. Chhayadip Lawns, in view of the notification dated 7th October, 2017 issued by Urban Development Department. The learned Counsel further submitted that this court, vide order passed on 10th August, 2017, has protected the construction of the Marriage Hall and the said protection may be continued at least for next four weeks. The learned Counsel further submitted that while passing the order on 10th August, 2017, this Court has directed the petitioner to deposit an amount of Rs.10,00,000/- (Rupees ten lakh) and accordingly the same amount has been deposited by the petitioner in this

court. The learned Counsel submitted that since the petitioner has now undertaken to remove the obstruction, as was called upon by the Municipal Council vide its notice dated 5th March, 2015, the aforesaid amount of Rs.10,00,000/- be refunded to the petitioner.

11) The learned Counsel for the respondent – Municipal Council submitted that the Municipal Council may not have any objection for permitting withdrawal of the writ petition by the petitioner in view of the fact that the petitioner has undertaken to remove the construction as was directed to be removed by the Municipal council vide its notice dated 5th March, 2015. The learned Counsel also acceded to the request made by the learned counsel for the petitioner for refund of the amount of Rs.10,00,000/- deposited by him in this Court.

12) In view of the submissions made as above, following order is passed, -

ORDER

i) The petitioner is permitted to withdraw

the present writ petition with liberty to take out appropriate proceeding before appropriate authority in challenge to the order whereby the Municipal Council has not accorded sanction to the revised layout submitted by the petitioner;

ii) Before filing of such proceeding, the petitioner shall remove the construction which was directed to be removed vide notice dated 5th March, 2015 issued by the Municipal Council to the petitioner;

iii) It would also be open to the petitioner to avail the remedy, as envisaged under The Maharashtra Town Planning (Compounded Structures) Rules, 2017, as introduced vide notification dated 7th October, 2017 issued by Urban Development Department, Government of Maharashtra, Mantralaya, Mumbai in regard to the construction of Mangal Karyalaya, which is directed to be demolished by the Municipal Council, Osmanabad vide its notice dated 13th July, 2017;

iv) If such an application is filed by the

petitioner within four weeks, the same shall be considered by the Competent Authority on its own merits and in accordance with law;

v) Till filing of such application, the protection, as extended by this Court vide order passed on 10th August, 2017, shall remain in force;

vi) The amount of Rs.10,00,000/- deposited by the petitioner in this Court be refunded to the petitioner;

vii) The Writ Petition stands disposed of as withdrawn with liberty as prayed for.

(P . R . BORA)
JUDGE

bdv/