

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.5441 OF 2017**

1.Shri.Paresh Shashikant Shah & Ors. ...Petitioners

Versus

1.Mira Bhayander Municipal Corporation & Ors. ...Respondents

Mr.Ashutosh R.Gole, for the Petitioners.

Mr.N.R.Bubna, for Respondent no.1.

Mr.H.P.Pandey, for Respondent Nos.2 to 13.

**CORAM : NARESH H. PATIL, ACTING CJ. &
G.S. KULKARNI, J.**

DATE : 24th August, 2018

P.C.:

1. Heard the learned Counsel for the parties. Perused the record.

2. The petitioners pray for the following substantive reliefs:-

“a. That writ of certiorari or writ in the nature of certiorari or any other appropriate writ, order or direction be issued and the records and proceedings of the development permission dated 25/08/2016 (Exhibit – C) and order dated 16/01/2017 (Exhibit – H) issued by the 1st Respondent, be called for and after examining the legality, validity and propriety thereof the development permission dated 25/08/2016 (Exhibit-C) and order dated 16/01/2017 (Exhibit-H) issued by the 1st Respondent be quashed and set aside.

1.

b. That writ of mandamus or writ in the nature of mandamus or any other appropriate writ, order or direction be issued and the 1st Respondent be directed to forthwith

withdraw and cancel the development permission dated 25/08/2016 (Exhibit-C) and order dated 16/01/2017 (Exhibit-H) issued by it.”

3. The respondent nos.2 to 13 have placed on record a simple copy of Regular Civil Suit no.889 of 2016 filed by the petitioners with the following reliefs:-

“(a) it be pleased to order, decree and declare that, notice dated 05/11/2016 bearing no.MNP/P.K.K.2/1614/2016 – 17 pertaining suit garage is bad in law, illegal, unlawful and not binding upon the Plaintiffs (Plaintiff No.5);

(b) it be pleased to order, decree and declare that, act of Defendant Corporation in granting development permission upto plinth level vide outward No.MP/MNP/NR/2473/2016-17 dated 25/08/2016 and sanctioning plan vide Outward No.MB/MNP/NR/2473/2016-17 dated 25/08/2016 is without following due process of law;

(c) it be pleased to order, decree and declare that, act of Defendant Corporation in granting development permission upto plinth level vide outward No.MB/MNP/NR /2473/2016-17 dated – 25/08/2016 and sanctioning plan vide Outward No.MB/MNP/NR/2473/2016-17 dated 25/08/2016 is in gross violation of the provisions of MRTP Act,1966, MMC Act,1949 and Development Control Regulation for Mira – Bhayander;

4. The learned Counsel submits that filing of suit has not been mentioned in the writ petition. The suit has been filed in the year 2016 and the petition has been filed in the year 2017. The learned Counsel for the Corporation submits that they would deal with the issue on its own merit. Filing of the suit ought to have been fairly

mentioned in the Writ Petition filed under Article 226 of the Constitution. However, the petitioners have suppressed the fact of filing of suit in the civil court.

5. Writ Petition is dismissed with cost of Rs.25,000/- to be paid to the Maharashtra State Legal Services Authority within two weeks.

Prashant
Vilas
Rane

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Prashant
Vilas Rane
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6. The petitioners shall be entitled to pursue their remedy before the Civil Court subject to deposit of cost.

[G.S. KULKARNI, J.]

[ACTING CHIEF JUSTICE]