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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2061 OF 2018

Mohammad Siddaqi Haji
Mohammad Momin ...Petitioner
vs.
Bhiwandi Nijampur City
Municipal Corporation & Ors. ...Respondents

ALONG WITH
WRIT PETITION NO.2659 OF 2018

Safeer Ahmed Gulam Dastageer
Khan ...Petitioner
vs.
Bhiwandi Nijampur City
Municipal Corporation & Ors. ...Respondents

W.P.No.2061 of 2018

Mr.Pandit Kasar for the Petitioner
Mr.G.S.Godbole a/w Mr.A.I.Patel I/b Mr.Imtiyaz Patel
for respondent No.7
Ms N.S.Mehra, AGP No.8

W.P.No.2659 of 2018

Mr.Raju Suryawanshi for the petitioner
Mr.G.S.Godbole a/w Mr.A.I.Patel I/b Mr.Imtiyaz Patel
for respondent No.5

CORAM : A.S.OKA AND RIYAZ.I.CHAGLA, JJ.
DATE ON WHICH THE JUDGMENT IS RESERVED:AUGUST 16, 2018
DATE ON WHICH THE JUDGMENT IS PRONOUNCED:DECEMBER 4,2018

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

1 In these two petitions under Article 226 of the Constitution of India the grievance is about the failure of the first respondent-Bhiwandi Nizampur City Municipal Corporation (for short 'the said Corporation') in both the petitions to take action

of demolition in respect of multistoried R.C.C buildings. The first respondent-Corporation is constituted under the provisions of the Maharashtra Municipal Corporations Act, 1949 (for short "the said Act of 1949"). The first respondent-Corporation is also a Planning Authority within the meaning of the Maharashtra Regional and Town Planning Act, 1966 (for short "the said Act of 1966"). It cannot be disputed that it is the legal obligation of the first respondent-Municipal Corporation to take action of demolition of illegal buildings by exercising the powers under the said Act of 1949 and/or the said Act of 1966.

2 In Writ Petition No.2061 of 2018, the grievance is in respect of the building constructed on Plot No.7 of Survey No.98/20 at Nagaon in Bhiwandi within the limits of first respondent-Corporation. It is pointed out that though the said Municipal Corporation granted permission to the seventh respondent and two others under section 45 of the said Act of 1966 to construct a building consisting of ground plus four floors for residential use, after expiry of the said permission, without obtaining a commencement certificate and plinth certificate, illegal construction was made of ground plus six floors. In fact, criminal law was set in motion by the said Municipal Corporation by taking recourse to section 52 of the said Act of 1966 and even a First Information Report has been registered.

3 The grievance of the petitioner in Writ Petition No.2061 of 2018 is that notwithstanding the registration of the complaint made by the petitioner on 2nd April 2018 with the first respondent-Corporation by taking recourse to the grievance redress mechanism, no action was taken. It is pointed out that not only illegal construction was made but on the ground floor, illegal commercial use was commenced. Moreover the building was illegally occupied.

4 We may note here that the seventh respondent's son had filed Regular Civil Suit No.633 of 2013 in the Court of Civil Judge (J.D.) at Bhiwandi in which ad-interim relief was granted for protecting the building from its demolition. However, under the order dated 3rd August 2018, the Civil Court permitted the said suit to be withdrawn.

5 It is an admitted position that not only that the building has been illegally constructed but the seventh respondent in his affidavit in reply has stated that he has applied under section 52-A of the said Act of 1966 for compounding of the structure of the building and the said application made on 13th March 2018 is pending. He himself and other occupants of the building have filed separate undertakings stating that they will not create any third party interests in respect of the respective premises in their possession and they will not

dispose of their respective premises. They have also given undertakings that in case the application under section 52-A of the said Act of 1966 is rejected, within a period of six weeks from the date of rejection, they will vacate the building and demolish the same.

6 In Writ Petition No.2659 of 2018, apart from the building subject matter of the first petition, there is a grievance made about the failure to take action of demolition in respect of a building constructed on Plot No.6 of Survey No.98/20 of village Nagaon of ground plus five floors and an illegal building on the land bearing Survey No.38 Hissa No.1 at Village Nagaon. It is pointed out that the fourth respondent in the said petition is an elected Councilor of the said Corporation. It is alleged that he has actively helped the fifth to seventh respondents in constructing the said illegal buildings. The fifth respondent in this petition is the seventh respondent in Writ Petition No.2061 of 2018.

7 In Writ Petition No.2659 of 2018, an affidavit in reply has been filed by the fourth respondent contending that he is not concerned with any building. He has denied that he has incurred a disqualification under clause (D) of sub-section (1) of section 10 of the said Act of 1949. The fifth respondent in this petition has also filed an affidavit in reply in which he has stated that an

application for compounding of the building constructed on land bearing Plot No.7 of Survey No.98/20 has been made by invoking section 52-A of the said Act of 1966. He has denied that the fourth respondent is concerned in any manner with the said construction. He has given an undertaking for himself and on behalf of co-owners and family members that in case the application under section 52-A is rejected, he and his family members will remove the unauthorized construction. In fact, the said respondent has filed a common affidavit in both the petitions to which a copy of the plan in respect of the building on plot No.7 of Survey No.98/20 submitted by his Architect on 4th August 2018 for the purpose of compounding under section 52-A of the said Act of 1966 has been annexed.

8 Now coming to the building constructed on land bearing Plot No.7 of Survey No.98/20 at Nagaon within the limits of the first respondent-Municipal Corporation which is stated to be numbered as Municipal house No.2431 and named as Sahjeeda Apartment, we must note that all the occupants have filed common undertakings in both the petitions on 3rd April 2018 which have been taken on record. The learned counsel for the first respondent has stated that the officers of the said respondent have perused the said undertakings and have verified that all the occupants of the building have given undertakings. Even the seventh respondent in Writ Petition No.2061 of 2018 has given an undertaking

for himself and on behalf of all co-owners and his family members. The undertakings are to the following effect:

- (a) The seventh respondent in Writ Petition No.2061 of 2018 has filed an application for compounding of the structure of the building on 13th March 2018;
- (b) They will not dispose of or part with the premises in their possession in the building;
- (c) In the event of rejection of the application for regularization/compounding, they will remove the construction carried out within a period of six weeks.

9 Thus, it is an accepted position that the entire building on the said land bearing Plot No.7, Survey o.98/20 is illegal. Other issue in Writ Petition No.2061 of 2018 is whether Shri Matlub Afzal Khan Sardar (fourth respondent in Writ Petition No.2659 of 2018) had occupied the premises in the building subject matter of Writ Petition No.2061 of 2018 for his office. We are dealing with the said controversy separately.

10 In Writ Petition No.2659 of 2018, the allegation is that the fourth respondent who is an elected Councilor has played a role in construction of the building subject matter of Writ Petition No.2061 of 2018. The allegation is that fifth to seventh respondents in Writ Petition No.2659 of 2018 have constructed illegal building with the help of

the fourth respondent and therefore, he has incurred a disqualification under clause (D) of sub-section (1) of section 10 of the said Act of 1949. As stated earlier, the persons who have constructed the building have accepted that the same is unauthorized and therefore, they have applied for compounding under section 52-A of the said Act of 1966. The issue whether the fourth respondent has helped the owners to construct the said building has direct nexus to the applicability of clause (D) of sub-section (1) of section 10 of the said Act of 1949.

11 Whether the fourth respondent has helped the owners to construct the illegal building or buildings is a question which will have to be looked into by the Municipal Commissioner. In this context, the contention raised by the petitioner in Writ Petition No.2061 of 2018 is that the said respondent was having his office on the ground floor of the house No.2431 is also relevant. The contention is raised on the basis of the note placed on record on 4th June 2018 which is taken on record and marked "N-1" for identification. The note is signed by the four Municipal Officers including the concerned Assistant Commissioner which records that the fourth respondent was occupying a premises in the said building for his office. Pursuant to the orders passed in the said Writ Petition, after verification of the records, the Municipal Commissioner has filed two affidavits in which he has stated that the said note (marked as 'N-1') is not prepared on the basis

of any record and none of the records available with Municipal Corporation show that the fourth respondent in Writ Petition No.2659 of 2018 was occupying the premises on the ground floor of the said building. However, we find that there is a photograph on record showing a board on the said premises which prima facie indicates that the premises on the ground floor was used by the fourth respondent in the said Writ Petition. The contention raised by the said respondent is that it is not the board affixed on the premises but it is a banner displayed during election time. As the Municipal Commissioner has filed two affidavits setting out that there is no record available to show that the said elected Councilor was occupying the premises in the said building, we cannot go into the said disputed question in writ jurisdiction.

12 Now we come to the building on the property subject matter of Writ Petition No.2659 of 2018 which is described in paragraph 5 (land bearing Survey No.38 Hissa No.1 admeasuring 16 acres at Nagaon). The petitioner is relying upon the notice issued by the first respondent-Corporation under the said Act of 1949 and the said Act of 1966 in which it is alleged that illegal RCC construction of basement plus ground floor has been completed and construction of the first floor is going on. In view of the said notice, we propose to issue directions to the first respondent-Municipal Corporation to take action in accordance with law. As regards the

allegation of illegal construction on plot No.6 of Survey No.98/20 made in paragraph 10 of this petition, we propose to direct the designated Officer to visit the site. If he finds that there is an illegal building constructed thereon, he will have to take action of demolition in accordance with law.

13 Hence, we dispose of the petitions by passing the following order:

(I) As regards the land bearing Survey No.38/1 of village Nagaon situated near Rajdhani Hotel, Khan Compound Road, Nagaon, Bhiwandi and the land bearing Plot No.6 of Survey No.98/20 of Nagaon, we direct the Designated Officer of the first respondent to make site visits within a period of three weeks from today. He will ascertain the extent of illegal construction, if any, carried out thereon, the persons in occupation and the name of the person or persons who have made the illegal construction;

(II) If the Designated Officer finds that there is an illegal construction of the buildings, he shall immediately initiate action of demolition in accordance with the provisions of the said Act of 1949 and/or the said Act of 1966. He shall ensure that due process of law is followed by issuing notices to all the occupants, if any, of the buildings and all persons likely to be affected by the demolition. The entire process of demolition shall be completed within a period of three months

from today. This period will be subject to prohibitory order, if any, passed by the Competent Court in the proceedings which may be filed for challenging the action of demolition. We make it clear that if there is no prohibitory order, the action of demolition must be completed within a period of three months from today;

(III) We accept the undertakings of various persons which have taken on record under the order dated 3rd April 2018. We also accept the undertakings given by the seventh respondent in Writ Petition No.2061 of 2018 for himself and on behalf of all the co-owners and family members;

(IV) The application for compounding/regularization of the building constructed on the Plot No.7 bearing Survey No.98/20 at Village Nagaon, Taluka Bhiwandi, District Thane shall be decided by the first respondent-Municipal Corporation, if not decided till today, as expeditiously as possible and in any event within a period of two months from today;

(V) If the said application is already decided, the order passed on the said application shall be communicated to the persons who have made application and to the persons who have given undertakings which are taken on record under the order dated 3rd April 2018. If the said application is not yet decided, the same shall be decided as per the directions issued above and the order passed

thereon shall be communicated to the persons who have made application for regularization and to the persons who have given aforesaid undertakings;

(VI) If the application is rejected or partly rejected, the building or any part thereof which is not regularized or compounded shall not be demolished for a period of six weeks from the date on which the order is communicated to the owner/seventh respondent in Writ Petition No.2061/2018 to enable the owner and occupants of the building to comply with their undertakings. On their failure to comply with the undertakings within the said period of six weeks, the first respondent shall immediately demolish the building (or the part thereof which is not regularized) which is the subject matter of the undertakings, if necessary, by forcibly evicting the occupants. On application made by the Municipal Corporation or its Officers, the Officer Incharge of concerned local police station shall provide police force consisting male and female constables for assisting the municipal administration in implementation of the order of this Court and for protecting the Municipal Officer and staff;

(VII) As regards the allegation in Writ Petition No.2659 of 2018 regarding fourth respondent incurring disqualification under clause (D) of sub-section (1) of section 10 of the said Act of 1949, the Commissioner of the first respondent shall look

into the material on record and after hearing the petitioners in both the petitions and the fourth respondent in Writ Petition No.2659 of 2018 shall ascertain whether the fourth respondent has played any role in the construction of the illegal structures. If he finds that he has played any role in illegal construction, the Municipal Commissioner shall take action in accordance with law. This exercise shall be completed by the Municipal Commissioner within a period of four months from today. We make it clear that we have made no adjudication on the question whether the fourth respondent in the Writ Petition No.2659 of 2018 has incurred disqualification as alleged;

(VIII) We have made no adjudication on the disputed question whether the fourth respondent in Writ Petition No.2659 of 2018 was occupying the premises in the building subject matter of Writ Petition No.2061 of 2018 and the issue is kept open to be agitated in appropriate proceedings;

(IX) Affidavit reporting compliance shall be filed by the Municipal Commissioner or by any senior Officer nominated by him on or before 8th April 2019. Though these petitions are disposed of, for considering the compliance, the same shall be listed on 19th April 2019 under the caption of 'Directions'.

(RIYAZ.I.CHAGLA,J.)

(A.S.OKA,J.)