

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5488 OF 2018

Shri Shrikant Dinanath Gaikwad and others. ... Petitioners.

V/s.

City and Industrial Development Corporation
(CIDCO) and others. ... Respondents.

WITH

WRIT PETITION NO. 8216 OF 2018

Shri Surendra Kumar Ramsurat Gupta. ... Petitioner.

V/s.

City and Industrial Development Corporation
(CIDCO) and another. ... Respondents.

Mr.Sanjay Sanghavi, Senior Advocate with Mr.Rahul Kamerkar
for the petitioners.

Mr.G.S.Hegde with Mr.C.M.Lokesh and Ms.Pinky M. Bhansali
for respondent No.1.

Mrs.R.A.Salunkhe, AGP for respondent No.2.

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CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 14th August 2018.

ORAL JUDGMENT : (Per A.S. Oka, J.)

By order dated 19th June 2018, the parties were put to notice that an endeavor shall be made to decide these petitions finally at the admission stage. The petitioners in Writ Petition No.5488/2018 are the residents of a buildings known as Datta Krupa Apartment, Amrut Dham

Society, and Avadhut Chhaya Apartment. The petitioners in Writ Petition No.8216/2018 is the resident of building Durga Mata Plaza. These buildings are situated in Navi Mumbai in Thane district. As far as the area in which the buildings are situated is concerned, it is not in dispute that the first respondent- the City and Industrial Development Corporation (CIDCO) is the Planning Authority. CIDCO is a New Town Development Authority constituted under sub-section 3A OF SECTION 113A of the MRTP Act. The buildings subject matter of these petitions have been constructed admittedly without obtaining a developmental permission from the Planning Authority. There is no dispute that the lands below the buildings were acquired by the State Government by taking recourse to the provisions of the Land Acquisition Act, 1894. The public purpose of acquisition was for setting up satellite city of Navi Mumbai. After paying compensation to the owners, the lands were handed over to CIDCO by the State Government.

2. By Maharashtra Act No.32 of 2017, section 52A was incorporated in the MRTP Act. Section 52A reads thus:

“52A. (1) Notwithstanding anything contained in this Act or any other law, for the time being in force, or in any judgment, order or direction of any Court where unauthorised development has been carried out on or before the 31st December 2015, in the area of Development Plan, the State Government may, upon the request of the Planning Authority, specify the terms and conditions, not inconsistent with the rules made in this behalf, on compliance of which and the compounding charges, infrastructure charges and premium on payment of which, the Planning Authority may declare such development as compounded structure.

(2) On declaration of such development as compounded structure under sub-section (1), no further proceedings under any law for the time being in force against the owner or occupier of such structure shall be taken or continued :

Provided that, no further development shall be permissible in any compounded structure, other than repairs and maintenance, and any development or reconstruction of such structure shall be only as per the provisions of the prevailing Development Control Regulations.”

By exercising power under sub-section (1) of section 52A of the MRTP Act, the Maharashtra Town Planning (Compounded Structures) Rules, 2017 (for short “the Compounded Structures Rules”) have been framed by the State Government. While incorporating section 52A in the MRTP Act, the Maharashtra Act No.32 of 2017 incorporated certain other provisions in the MRTP Act. For the purposes of these petitions, sub-section (5A) of section 2 is relevant which reads thus:

“(5A) “compounded structure” means any development of land in respect of which the compounding charges, infrastructure charges and premium as levied by the Collector under the provisions of sub-section (2B) of section 18 or by the Planning Authority under section 52A, are paid by the owner or occupier of such structure and which upon such payment has been declared as compounded structure by the Collector or Planning Authority, as the case may be;”

3. Applications for regularization were made in respect of the buildings subject matter of these two petitions by invoking section 52A of the MRTP Act and Compounded Structures Rules. The challenge in these

petitions under Article 226 of the Constitution of India is to the communications issued by the first respondent on 12th April 2018 by which applications in respect of the aforesaid buildings for regularization/compounding under section 52A were rejected on the grounds set out in the said communication which read thus:

"1) The encroachment is on lands acquired by Govt. for the public purpose of developing Navi Mumbai New Town. There is no provision in Land Acquisition Act, 1894 to regularize encroachment on land acquired under this Act.

2) There is no provision in Navi Mumbai Disposal of Land Regulation, 2008 (NMDLR) as well as in MR & TP Act, 1966 to regularize land to the encroachers/tresspassers.

3) The development cannot be regularized in situ from planning point of view. The land is required for development of Navi Mumbai New Town."

(underlined supplied)

There is a reply filed by the first respondent (CIDCO) of Dr. Parmanand Tulsidas Gedam, Senior Planner (DP) in Writ Petition No.5488/2018 which is treated as a common reply to both the petitions. Apart from setting out several other aspects, reasons have been set out as to why the first respondent is unable to grant No Objection Certificate (NOC) as contemplated by clause (f)(i) of Rule 6 of the Compounded Structures Rules. It is not in dispute that the first respondent is the owner of the land below the subject buildings. The reasons for refusing to regularize the buildings have been set out in paragraph-14 of the affidavit-in-reply which read thus:

“14. I say that under Rule 6 of compounding of the unauthorized structures under Section 52(A) of the MR & TP Act, it is not mandatory upon the authorities to consider the applications for compounding of unauthorized developments. Apart from the above reasons, the subject structures cannot be regularized for the following reasons:-

i) The structure known as Durgamata Plaza in Survey No.21, village Dighe, falls in Regional Park Zone. The maximum permissible FSI for residential use in RPZ is 0.15. The structure under consideration has visibly consumed FSI more than 1.00 (Satellite image of the said structures is annexed and marked as Exhibit 6. In view thereof, the said structure cannot be regularized.

ii) The structure known as Amrutdham CHS falls in Residential Zone within the limits of “Proposed Road” in the layout plans (Layout plan vis a vis tentative superimposition of footprints the said structures is annexed and marked as Exhibit 7. In view thereof, the said structure cannot be regularized as the said would be affected to the proposed development.

iii) Other two buildings known as Datta Krupa CHS and Avadhut Chaya fall within the lands which had demarcated for development and disposal by inviting tenders. The regularization of the said two structures would result in violation of the NMDLR, 2008.

iv) The lands under the structures have been acquired by the Respondent Corporation. Compensation has been paid to the land owners and also benefit of 12.5% scheme i.e. additional compensation in form of developed land has been given to the land owners.

v) Regularization of the unauthorized structures shall lead to haphazard development, inadequate infrastructure development of the city jeopardizing

planning aspects of the city of Navi Mumbai.

vi) Regularization of the said structures would be unconstitutional for other citizens who had purchased plots at tendered rate or had purchased flats developed by CIDCO through lottery system i.e. in a lawful way. In view thereof it will be against the natural justice to declare the encroachment as compounded structures.”

(emphasis added)

4. The learned senior counsel appearing for the petitioners submitted that in view of specific provision of Rule 6 of the Compounded Structures Rules, even an unauthorized development which has taken place on the land owned by a public authority such as the first respondent can be regularized. He submitted that in clause (f) of Rule 6, it is permissible for the public authority which is the owner of the land to grant No-Objection Certificate (NOC) and to transfer the lease of the land below the illegal building to the concerned persons by following due process of law applicable thereto. He submitted that the first respondent which a public authority cannot refuse to grant NOC in every case without application of mind. He submitted that the first respondent ought to have considered each case on its own merits and, especially the case of the subject buildings where there is material to show that the citizens were misled and duped by dishonest builders and developers. He invited our attention to the report of the committee constituted by the State Government on the basis of which section 52A was incorporated in the MRTP Act. He would submit that the refusal to issue NOC and thereby refusing to regularize the subject buildings by the first respondent is completely arbitrary. He submitted that the reasons ought to have been

recorded by the first respondent after considering the facts of the case for refusing to grant NOC. He submitted that there are sufficient powers vesting in the first respondent to grant lease of the lands below the subject buildings to the co-operative societies of the flat purchasers in the subject buildings. He submitted that the reasons given in the impugned communication dated 12th April 2018 cannot be supported by either section 52A of the MRTP Act or the Compounded Structure Rules.

5. The learned counsel appearing for the first respondent submitted that valid reasons have been assigned for denying NOC and for denying regularization of the illegal buildings constructed on lands vested in the first respondent. He submitted that the lands under the structures have been acquired by paying a huge amount by way of compensation under the Land Acquisition Act, 1894 (for short "the said Act of 1894") and also by granting developed plots having an area equivalent to 12.5% of the area of the acquired lands at concessional rates to the land owners. He submitted that the disposal of the lands vesting in the first respondent is governed by the Navi Mumbai Disposal of Lands (Amendment) Regulations, 2008 (for short "Land Disposal Regulations"). He also invited our attention to the City and Industrial Development Corporation of Maharashtra Limited (Lease of land to Cooperative Housing Society) (Amendment) Regulations, 2008 (for short "the Regulations of 2008"). He submitted that in case of allotment of plots vested in the first respondent to the co-operative housing societies, a scheme is required to be formulated as provided in Regulation 3 of the said Regulations of 2008. He submitted that the allotment of plots vesting in the first respondent

are strictly required to be made in accordance with the said Regulations of 2008 and, therefore, in this case, NOC under sub-clause (ii) of clause (f) of Rule 6 cannot be issued.

6. The submission of the learned senior counsel appearing for the petitioners is that the right to shelter guaranteed by Article 21 of the Constitution of India to the occupants of the subject buildings will be violated if regularization is not approved.

7. We have considered the submissions. We have already quoted section 52A of the MRTP Act. Sub-section (1) of section 52A is an enabling provision by which the Planning Authority can declare an unauthorized development carried out on or before 31st December 2015 as a compounded structure. We have already quoted sub-section 5A of section 2 of the MRTP Act which defines a compounded structure. Every unauthorized structure constructed on or before 31st December 2015 does not become a compounded structure. The same is required to be declared as such by the Collector or the Planning Authority, as the case may be, after compounding charges, infrastructure charges and premium as provided under sub-section (2B) of section 18 are paid by the concerned persons.

8. Whether a particular development of unauthorized structure can be declared as a compounded structure is determined by the Compounded Structures Rules. Rule 5 thereof lays down the types of unauthorized developments which shall not be considered for declaration

as compounded structures under section 52A of the MRTP Act. What is material for our consideration is Rule 6 of the Compounded Structures Rules which reads thus:

“6. the following types of unauthorised developments may be considered for declaration as compounded structure subject to the fulfillment of conditions mentioned below and parameters specified in the table annexed to these rules.

(a) Unauthorised development on inam lands and class-II Occupant lands on production of clearance or No Objection Certificate from the competent authority;

(b) Unauthorised developments on land reserved for public purpose except playground, garden and open spaces in any plan. If the said reservations shifted or deleted after following due process of law, subject to the condition that the cost of shifting or deletion is borne by the owner and/or occupier;

(c) Unauthorised developments on lands reserved for linear reservations such as roads, railways, metros in any plan, if the said linear reservations are shifted after following due process of law;

(d) Unauthorised developments on buildable reservations in any plan, if requirement of regulation for Accommodation Reservation are complied with;

(e) Unauthorised developments violating the land use zone, if the land use zone is changed after following due process of law subject to the condition that the cost of zone change is borne by the owner and/or occupier;

(f) Unauthorised developments on Government lands or lands owned by other public authorities on production of,-

(i) No objection certificate from the land owning

authority authorised to do so under the law applicable thereto; and

(ii) After transfer or allotment or lease of such land to the concerned person by following due process of law under the law applicable thereto;

(g) Unauthorised developments on land earmarked for any special scheme for rehabilitation or resettlement of any Project Affected Person, at the discretion of the Planning Authority;

(h) Unauthorised developments on unauthorised plots subject to conditions mentioned in entry 15 in the table annexed hereto;”

9. Hence, unauthorized development- unauthorized structure made on a government land or a land owned by other public authorities can be declared as a compounded structure provided two conditions are satisfied namely, (a) NOC from the land owning authority authorized to do so under the law applicable thereto is produced and (b) transfer or allotment or lease of such land to the concerned person is made by following due process of law under the law applicable thereto.

10. CIDCO- the first respondent is a public authority being a Company owned by the State Government. In the present case, the first respondent is admittedly the land owning authority and the Planning Authority within the meaning of the MRTP Act. It is true that the first respondent is empowered to grant NOC as contemplated by sub-clause (i) of clause (f) of Rule 6 of the Compounded Structures Rules. However, the said authority can do so as per the law applicable thereto. Moreover,

an unauthorized development on the land owned by the public authority will not qualify for being declared as compounded structure unless the land below the unauthorized development or construction is transferred or allotted by the land owning authority to the person applying for regularization. Sub-clause (ii) of clause (f) of Rule 6 makes it very clear that such transfer or allotment or lease of land has to be made by following due process of law under the law applicable thereto. Therefore, if the land owning authority is to transfer the land below the illegal construction to the person applying for regularization, the same has to be done by following due process of law as per the law applicable thereto. It follows that if grant of transfer or allotment or lease as stipulated by sub-clause (ii) of clause (f) of Rule 6 is not permissible as per the applicable law, the land owning authority cannot transfer or allot or create lease of the land. Therefore, in such a case, the conditions specified by Rule 6 will not be fulfilled and the unauthorized development will not be qualified for being declared as a compounded structure.

11. The first respondent which is a Government of Maharashtra owned company has been appointed as the New Town Development Authority for the satellite city of Navi Mumbai. A judicial notice of the fact can be taken that in late 60s, based on recommendations of the Committee appointed under the chairmanship of Shri S.G.Barve, a retired Civil Servant, the State Government took a decision of setting up a new satellite city to reduce the congestion in Mumbai. As stated in paragraph-6 of the reply, Navi Mumbai was constituted comprising of an area of 344 sq.km. consisting of 95 villages. A judicial notice will have to

be taken of the fact which is noted in some of the decisions of the Apex Court and this Court that huge activity of en-block acquisition of lands from 95 villages under the provisions of the said Act of 1894 was undertaken by the State Government. In fact, the affidavit-in reply records that most of the lands in Navi Mumbai have been acquired under the said Act of 1894. Moreover, the affidavit-in-reply records that not only a huge compensation has been paid for acquiring the lands including the lands below the subject buildings, but as per the policy of the State Government, the plots developed by the first respondent have been allotted to the owners of the acquired lands by way of additional compensation at concessional rates. It is stated that an area of plots allotted is equal to 12.5% area of the acquired area. In paragraph-8 of the affidavit it is stated thus:

“8.While setting up CIDCO in early 1970, it was made clear that CIDCO would undertake development of all infrastructure works to attain the objectives of the setting of Navi Mumbai New Town. Land is the only main resource for financing the multifaceted development in Navi Mumbai. CIDCO shall recoup all expenditure it would incur on development inclusive of establishment and administration cost from sale of land. The said development is being carried out in phases considering the finance of this Respondent Corporation. If in case, a part of Navy Mumbai’s land gets encroached, CIDCO will not be able to finance its planned infrastructure. As per the Project Report prepared from Navi Mumbai in 2016, the enclosed statement shows that the net recoverable cost from 2015-16 to 2028-29 on infrastructure is Rs.34,685.29 crores and the balance saleable land in Navi Mumbai as per said Project Report is 1799.87 Ha. And out of which 356.21 Ha. Land will have to be allotted without consideration of any revenue as it will be allotted on account of 12.5% scheme for

PAPs of Navi Mumbai. Therefore, CIDCO will have to generate Rs.34,685.29 crores through sale of 1443.66 Ha only and in this circumstances, if saleable plots are encroached, CIDCO will not be able to finance its infrastructure projects and ensure planned development."

(emphasis added)

Thus, reasons have been assigned as to why the first respondent declined to grant NOC as contemplated by sub-clause (i) of clause (f) of Rule 6 of the Compounded Structure Rules. It is not possible for a Writ Court to exercise writ jurisdiction under Article 226 of the Constitution of India to record a conclusion that the aforesaid reasons set out by the first respondent are not relevant. The decision making process cannot be faulted with. On the contrary, the reasons are very relevant. The fact that the lands on which the subject buildings have been constructed have been acquired for public purpose by taking recourse to the provisions of the said Act of 1894 and by paying compensation, is certainly a very relevant consideration.

12. Our attention is invited to the Land Disposal Regulations for Navi Mumbai which are applicable to all lands and apartments of the first respondent within Navi Mumbai. The conditions for disposal of the plots are laid down in Chapter-III of the Land Disposal Regulations. Regulation 4 requires that the first respondent shall dispose of the plots by inviting public tenders or by public auction, except in four categories set out therein. One of the four exceptions which may apply to the case of the petitioners is clause (ii) which is applicable to the allotment of plots to co-

operative housing societies for construction. The said allotment is governed by the said Regulations of 2008 which are applicable to the allotment of plots to the co-operative housing societies for residential use in Navi Mumbai. Chapter-II of the said Regulations of 2008 deals with manner of allotment of plots to co-operative housing society. Before allotment of plots, a scheme is required to be formulated for disposal of plots to the co-operative societies as provided in Regulation 3 onwards of the said Regulations of 2008. In this case, nothing is placed on record to show that such a scheme was formulated covering the plots on which subject buildings have been constructed.

13. Therefore, in this case, the first respondent is right in contending that as per the applicable law, it is not permissible for the first respondent to transfer or allot or create lease of the lands below the subject buildings to the persons who have applied for regularization or the co-operative societies formed by the purchases of the flats in the said buildings. Therefore, the first respondent has established that in law, in the cases in hand, the first respondent is not empowered to transfer or allot or create lease of the lands as provided in sub-clauses (i) and (ii) of clause (f) of Rule 6 of the Compounded Structures Rules.

14. Therefore, we find no fault with the reasons given by the first respondent for rejecting the application under section 52A of the MRTP Act. Moreover, we are dealing with the cases of unauthorized RCC construction of multi-storied buildings in which the flat purchasers have purchased flats with the knowledge that the buildings are unauthorized.

We are not dealing with the case of illiterate persons who are occupying slums or shanties. The occupants of the buildings have given undertakings to this Court in the earlier petitions filed by them to hand over the vacant possession of their flats to the Court Receiver by 31st December 2015 and now the Court Receiver is in possession of the flats. The orders in the Petitions filed earlier have become final. There is no merit in the argument based on violation of Article 21. The rights under Article 21 cannot be invoked to protect an illegal RCC construction on public properties. Hence, we find no merit in the petitions and the same are rejected.

15. Considering the fact that the petitioners were occupying residential tenements, we direct that action of demolition shall not be taken by the first respondent in respect of the subject buildings for a period of two months from the date on which this judgment and order is uploaded.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)