

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

WRIT PETITION NO.9538 OF 2017

Smt. Shashikala Pai	...	Petitioner
Versus		
The City And Industrial Development Corporation of Maharashtra (CIDCO) And Others	...	Respondents

.....

Mr. R.S. Apte, Senior Advocate a/w Ms. N.N. Thakkar for the Petitioner.
Mr. B.B. Sharma for Respondent Nos.1 and 2.
Mr. V.S. Gokhale, 'B' Panel Counsel for Respondent No.4.
Mr. A.G. Damle i/b Mr. N.P. Shimpi for Respondent Nos.5 to 10.

.....

**CORAM : SHANTANU KEMKAR &
SARANG V. KOTWAL, JJ.**

DATE : 10 SEPTEMBER 2018

P.C. :

. Parties through their learned Counsel.

2 On 18 July 2017, this court whilst issuing notice to the Respondents has passed the following order :

“1]

2] Heard the learned counsel appearing for the petitioners. Issue notice to the Respondents, returnable on 28 August 2017. In addition to service through Court, private service is permitted. We

direct the Petitioner to serve an authenticated copy of this order in the office of the 1st Respondent. Within a period of 3 days from the date of receipt of an authenticated copy of this order, the 1st Respondent shall immediately depute appropriate office to visit the site subject matter of this petition for ascertaining the existence of the illegal structures, if any, as alleged in the petition. If the said office finds that illegal structures as alleged in the petition have been made, the 1st and 2nd Respondents shall immediately initiate action for demolition of the structures in accordance with law. Needless to add that the action of demolition shall not be taken without giving an opportunity of being heard to the affected parties. The affidavit of compliance shall be filed by the 1st and 2nd Respondents on or before 22 August 2017.”

3 Learned Counsel for the parties submit that hearing was done as directed by this Court.

4 Reply affidavit has been filed on behalf of Respondent Nos.1 and 2. In paragraph-8 of the reply, the following statement is made :

“I say that at the said hearing on 11.08.2017, Shri Baliram Dattatray Patil was present with his Advocate, and submitted that the said structure is old structure which was constructed after obtaining necessary permission as required at the relevant time. Shri Baliram Dattatray Patil, submitted that these structures has been existing on the site prior to CIDCO became the special planning authority for NAINA jurisdiction. He submitted that they were residing in the Gat No.163 since 1980 or prior thereto. He also submitted that there are disputes between the Petitioner and

him concerning this matter which is sub-judice in the lower courts. He submitted that he had obtained necessary permissions from concerned authorities that were required at the relevant time for construction and his structure is an authorized structure. He said he will produce relevant permissions and documents in support and sought time till 14/08/2017 for this purpose.”

5 During the hearing of the petition, learned Counsel for Respondent Nos.1 and states that in the absence of record from the concerned Revenue Department, it will not be possible to give any finding as to the fact whether the structure is authorized or not. It is also case of Respondent No.1 that in regard to said difficulty which has been faced by Respondent No.1, a letter has been addressed on 27 October 2016 to Tahsildar, Panvel.

6 Having considered the submissions of learned Counsel for the parties, we dispose of the petition by directing the Collector, Raigad to hear the Petitioner's grievance about the subject construction. The Competent Authority of Respondent No.1 and the concerned Tahsildar shall provide all necessary information to the Collector in regards to the Petitioner's grievance regarding encroachment done by the private Respondents on the subject property.

7 Before taking any decision as aforesaid, the Petitioner as also Respondent Nos.5 to 10 be given an opportunity of hearing.

8 Needless to say, the rights and contentions of the parties are kept open and that we have not commented upon the merits of the matter.

9 The parties are directed to appear before the Collector, Raigad on 26 September 2018 at 03.00 p.m. On that day, Respondent No.1 shall keep the Competent Authority present in the Office of the Collector, Raigad.

10 A decision as aforesaid be taken by the Collector within four months from the date of appearance of the parties before it.

11 With the aforesaid directions the petition is disposed of.

[SARANG V. KOTWAL, J.]

[SHANTANU KEMKAR, J.]

Rajesh
Vasant
Chittewan

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by Rajesh
Vasant
Chittewan
Date:
2018.09.11
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