

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.9047 OF 2015**

1.Mrs. Bilkees M.Shaikh

2.Rashad M.Shaikh.

...Petitioners.

Vs.

1.The Chief Executive Officer,
Pune Cantonment Board & Ors.

...Respondents

WITH

WRIT PETITION NO.7760 OF 2018

Rashad M.Shaikh

...Petitioner

vs.

1.The Chief Executive Officer,
Pune Cantonment Board & Ors.

...Respondents

Mr.Nitin Deshpande, for the Petitioner in both the matters.

Mr.K.J.Presswalla with Mr.Sandeep Goyal I/b. M/s.Mulla & Mulla &
Craigie Blunt & Caroe, for Respondent Nos.1 to 7 in WP 9047/15 and
for Respondent Nos.1 to 4 in WP 7760/18.

Mr.Siddarth Deshpande, for Respondent nos.7 & 8 in WP 7760/18.

Mr.Vikramjeet Singh I/b. Ritesh Wagh, for Respondent no.8 in WP
7760/18.

**CORAM : NARESH H. PATIL, ACTING CJ. &
G.S. KULKARNI, J.****DATE : 6^h OCTOBER, 2018**

P.C.:

1. Learned Counsel for the petitioner informs that petitioner no.1-Mrs.Bilkees M.Shaikh in Writ Petition no.9047 of 2015 expired after filing of the petition. The learned Counsel submits that as the

petition would stand abated against petitioner no.1, and petitioner no.2- Rashad M.Shaikh is the son of the deceased petitioner no.1, he be allowed to prosecute the petition on behalf of petitioner no.1. The learned Counsel for the petitioners seeks leave to amend the petition to delete name of petitioner no.1-Mrs.Bilkees M.Shaikh. We granted leave. Amendment be carried out forthwith.

2. In Writ Petition no.9047 of 2015 the petitioner is pressing only prayer clause (a) which reads thus:-

“(a) this Hon'ble Court may, by way of appropriate writ order or direction, direct the Respondent Nos.1 to 7 to proceed in accordance with the Notice dated December 20, 2008 and take stern action in accordance with law;”

3. The issue which arose in the year 2008 is now being agitated in these two petitions which relates to the question, as to whether the adjoining house belonging to respondent no.8 was repaired/reconstructed under a valid permission of the Competent authority without a no objection/consent from the petitioner who is the adjoining owner.

4. Affidavits are filed by the affected parties and the Cantonment board, Rejoinders are also filed, Certain photographs are

also placed on record. After the appellate authority dismissed the appeal of the adjoining owners, an application for compounding was filed. The said application came to be rejected. According to the learned Counsel for the Cantonment board, the said application is entertained by the Higher Authority. Therefore, the authority concerned has directed the cantonment board at the first instance to look into the matter and take steps to compound, but did not compound the subject construction.

5. For some time, it seems that the cantonment board was under dilemma as to whether they would exercise power and decide the compounding application. During the course of hearing, the learned Counsel for the Cantonment board referred to the communication made by the Principal Director, Defence Estates, in some other matter wherein the Director opined that in respect of the property in civil area, the board is competent to consider the composition plan under Section 248 of the Cantonments Act, 2006 provided it is complying with Land Policy, FSI etc. The learned Counsel submits that according to the said communication, the Cantonment board would look into the matter and deal with the petitioner's application and can take a decision. We may observe that in case the Cantonment board is of the opinion that it can take a decision, then a decision shall be taken.

6. The learned Counsel for the petitioner submits that petitioner no.2 had approached for permission for repairing and/or for part-reconstruction of his house, but prior to doing so a huge tree between the house of the petitioner and respondent no.7 (Respondent No.8 in Writ Petition No.7760 of 2018) is required to be cut and the permission as sought is declined by the Cantonment board. The learned Counsel submits that unless the permission is granted to cut the tree, no repairing or reconstruction can be carried out. The learned Counsel for cantonment board submits that if an application is submitted seeking permission to cut the tree, the authorities would consider the said application afresh.

7. We have heard the learned Counsel for respondent no.7 who states that respondent no.7 is also desirous of repairing or reconstructing his building/structure subject to permission being granted by the authorities. It is however submitted that in view of the aforestated circumstances and the stalemate, he is unable to proceed further. He says the difficulties faced by respondent no.7 is the huge Peepal tree which has grown between these two buildings.

8. We may observe that respondent no.7 (in Writ petition no.7760 of 2018) if desirous of filing an application for repairing or

reconstruction or part-construction in accordance with the relevant laws, he is entitled to file such an application with the cantonment authority, and if such an application is received, the authority shall consider the same and dispose of the same expeditiously.

9. The connected Writ petition no.7760 of 2018 is filed by petitioner-Mr.Rashad M.Shaikh, wherein the petitioner prays for the following relief:-

“(a) this Hon'ble Court may, by way of appropriate writ order or direction, quash and set aside the Cantonment Board Resolution No.67, dated 19.9.2017 and the Communication bearing No.ENG/CDN/TBC/23/787, and further direct the respondent Nos.1 to 5 to remove the Peepal Tree in question at the cost of the petitioner;”

10. In view of the aforesaid observations made by us and the statements made by the learned Counsel appearing for the Cantonment board, if a fresh application for cutting the tree is made, the Cantonment Board shall consider the same so that application/proposal for further process of repairing or part-construction or reconstruction of the house can be considered by the Cantonment Board. We observe that in case the parties prefer such an application, the Cantonment Board shall expeditiously process such application without being prejudice by the earlier decisions taken by the Cantonment Board, and communicate its

decision to the parties.

11. Both the petitions stand accordingly disposed of.

[G.S. KULKARNI, J.]

[ACTING CHIEF JUSTICE]