

Sharayu Khot.

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

WRIT PETITION NO. 550 OF 2017

Man Realty Limited **...Petitioner**

Versus

Thane Municipal Corporation And Anr. **...Respondents**

WITH

CIVIL APPLICATION NO. 282 OF 2017

Mr. Santosh Laxman Vad **...Applicant**

In the matter between

M/s. Man Realty Limited **...Petitioner**

Versus

Thane Municipal Corporation And Anr. **...Respondents**

WITH

CIVIL APPLICATION NO. 64 OF 2018

**The Secretary to the Government,
Revenue & Forest Department.** **...Applicant**

In the matter between

M/s. Man Realty Limited

...Petitioner

Versus

Thane Municipal Corporation And Anr.

...Respondents

Mr. Vineet Naik, Senior Counsel a/w Mr. Krishna Moorthy & Ms Kaidokht Vasania, i/by Wadia Ghandy & Co, for the Petitioner.

Mr. S.M. Oak, i/by Mr. Sagar Joshi, for the Applicant in CAW/282/17.

Mr. A.B. Vagyani, Government Pleader a/w Ms. Nisha Mehra, AGP, for the Applicant in CAW/64/18.

Mr. R.S. Apte, Senior Advocate, i/by Mr. Ajit Ram Pitale, for the Respondents No. 1 and 2.

**CORAM : ABHAY S. OKA AND
RIYAZ I. CHAGLA, JJ.**

DATE : 1 August 2018

ORDER :

1. On 26th July 2018, apart from the learned Counsel appearing for the parties to the Petition, we had also heard the learned Counsel appearing for the Applicant in the Civil

Application No. 282 of 2017 and the learned Government Pleader for the Applicant in the Civil Application No. 64 of 2018. On 26th July 2018, all the parties were put to the notice that the petition will be heard and disposed of finally at the stage of admission.

2. According to the case of the Petitioner, a permission under Section 45 of the Maharashtra Regional and Town Planning Act 1966 (for short “**MRTP Act**”) was granted to the Petitioner for construction of the building on the land bearing Survey Nos. 99/2, 114/4 and 115/2 of Village Kolshet, Taluka and District Thane. A copy of the Commencement Certificate is annexed to the Petition.

3. The challenge in this Writ Petition is to the communication/order dated 5th/10th January 2017 issued by the Assistant Director of Town Planning (the 2nd Respondent) who is an Officer of the 1st Respondent-Municipal Corporation. The English Translation of the material portion of the said

communication/order reads thus:-

“Regarding the land situated at survey number 114/4, 115/2 and 99/2 in village Kolshet mentioned in your development proposal, in the discussion that occurred in the Hon. Vidhan Parishad as part of a point of attention, the Hon. Minister (Revenue) has given a stay order of 15 days on the project being constructed on the said land and has promised that a detailed study will be done and the matter will be investigated. In reference to that you are being asked to stop all construction of the said project until further orders are received from the Government.

With the approval of Hon. Commissioner.”

4. The learned Senior Counsel appearing for the Petitioner submitted that the Commencement Certificates issued on 11th January 2016 and 24th February 2016 (Exhibit B and C) have been amended and a fresh Commencement Certificate has been issued on 11th August 2017. He has tendered across

the bar a copy of the amended Commencement Certificate which is marked as ***Exhibit CC1*** for identification. Condition No. 26 of the said Commencement Certificate is that an undertaking has been given by the Petitioner on 6th June 2017 stating that no construction of any building is proposed on the land bearing Survey No. 99/2. The learned Senior Counsel appearing for the Petitioner on instructions states that so far no construction has been carried out on the land bearing Survey No. 99/2 and the Petitioner does not intend to carry on any construction. He has also placed on record a copy of the modified sanctioned plan approved in terms of which the Commencement Certificate dated 11th August 2017. The same is taken on record and marked as ***Exhibit CC2*** for identification. He submits that only on the basis of the oral directions of the Hon'ble Minister, the impugned stop work notice could not have been issued and that also without mentioning the provision of law under which it is issued and without giving an opportunity of being heard to the Petitioner.

5. The learned Senior Counsel appearing for the Respondents has placed on record a compilation of documents starting with the letter dated 30th December 2016 addressed by the Deputy Commissioner (Revenue) Kokan Division to the Municipal Commissioner of the 1st Respondent and the District Collector. He has also placed on record a copy of the proceedings of the Vidhan Sabha in the Winter Session held in December 2016. He submitted that on the basis of the statement made by the Hon'ble Minister in the proceedings before the Vidhan Sabha that the impugned communication has been issued by the Municipal Corporation.

6. The learned Counsel appearing for the Applicant in the Civil Application No. 282 of 2017 invited our attention to the Annexure to the Application (Exhibit B). He submitted that a permission was granted by the 1st Respondent-Municipal Corporation to the Petitioner for construction on the land bearing Survey No. 99/2, though it is the land vesting in the State Government. He pointed out that Exhibit A to the

Application shows that the proceedings are pending before the State Government. He has placed on record an additional Affidavit. He submitted that the Annexure to the said Affidavit shows that Floor Space Index (for short "***FSI***") on the land bearing Survey No. 99/2 is being loaded on the other two lands, though the land bearing Survey No. 99/2 is vesting in the State Government. His submission is that instead of taking recourse to the provisions of Section 51 of the MRTP Act and/or Section 258 of the Maharashtra Municipal Corporations Act, 1949 (for short "***the said Act of 1949***") by revoking the development permission, the Respondents have deliberately passed a wrong order for favouring the Petitioner. The learned Government Pleader submitted that as a land vesting in the State Government being the Survey No. 99/2 is the subject matter of development permission granted by the Municipal Corporation, a Report was submitted by the District Collector and therefore, the State Government is a necessary party to this Writ Petition.

7. We have considered the submissions. We have

already quoted the English translation impugned communication. The learned Government Pleader, at this stage, submitted that the Hon'ble Minister was fully justified in issuing the directions which were issued on the basis of which the Municipal Corporation has acted. His submission is that the Municipal Corporation granted the permission without obtaining sanction of the Government.

8. By clause 2 of the order dated 26th July 2018 of this Court, the State Government was directed to produce the file containing the order passed by the State Government on the basis of which the impugned communication at Exhibit A has been issued. Apart from the fact that the file has not been produced, Civil Application No. 64 of 2018 made by the State Government does not contain any such averments about any order in writing passed by any authority of the State Government.

9. Under the provisions of Section 51 of the MRTP Act

and Section 258 of the said Act of 1949, the Municipal Corporation has abundant the powers to revoke the development permission granted on the grounds set out in the said provisions. If according to the State Government, the 1st Respondent-Municipal Corporation committed a gross illegality by granting permission to develop the land bearing Survey No. 99/2 which is vesting in the State Government or allowed FSI of the said land to be used by the Petitioner on the other land, the State Government could have easily issued a direction under Section 154 of the MRTP Act enjoining the Municipal Corporation to initiate the proceedings under Section 51 of the MRTP Act. Instead of doing that, perhaps oral directions were issued to the Municipal Corporation to issue the impugned communication. Apart from the provisions of the MRTP Act, there are abundant powers vesting in the State Government to issue directions to the Municipal Corporation. Under Section 448 of the said Act of 1949, if the State Government finds that the Municipal Corporation has not performed its duty, the State Government has an authority to appoint an officer and direct

the officer to perform the duties of the Municipal Corporation. Under Section 450-A, the State Government has powers to issue instructions or directions to the Municipal Corporation. Moreover, if the State Government was satisfied that any construction is being carried out on a land vesting in it, there are abundant powers vesting in the State Government under the provisions of the Maharashtra Land Revenue Code, 1966 to take action of eviction.

10. If the submissions of the learned Government Pleader are correct, there is every justification for the criticism offered by the learned Counsel appearing for the Applicant in Civil Application 282 of 2017 that deliberately such action of issuing communication at Exhibit A was taken just to help the Writ Petitioner.

11. While we are dictating this order, the learned Government Pleader has produced the relevant file. In the file, admittedly, there is no order passed by the Hon'ble Minister.

However, on 6th January 2017, the Desk Officer of the Urban Development Department addressed a letter to the Municipal Commissioner referring to the assurance given by the Hon'ble Minister in the Maharashtra Legislative Council that by granting stay to the construction for a period of 15 days, a detailed study of the issues raised by the Hon'ble Members will be made. In fact, in the said letter addressed to the Municipal Commissioner it is stated that the construction commenced on the land bearing Survey Nos. 114/4, 115/2 and 99/2 is stayed for a period of 15 days. There is nothing on the file to show that the period of stay of 15 days was extended by the State. Thus, the stay granted by the State Government came to an end on expiry of the period of 15 days from 6th January 2017. The impugned communication was stayed by the Division Bench of this Court on 18th January 2017. In any case, today the direction of the State Government cannot be applied or enforced.

12. In fact, in a matter like this, the State Government ought to have issued further directions to the

Municipal Corporation. Thus, the only conclusion which can be drawn is that, there is no legal provision under which the State Government could have issued the direction which is issued of granting stay of construction for a period of 15 days. In any case, now the challenge to the communication Exhibit A does not survive.

13. We must make it here very clear that notwithstanding the orders passed by this Court, it will be open for the State Government to issue appropriate directions to the Municipal Corporation. It will be also open for the 1st Respondent-Municipal Corporation to initiate appropriate proceedings in accordance with law both under the MRTP Act and the said Act of 1949 in relation to the development permission granted to the Petitioner. If according to the State Government, the land bearing Survey No. 99/2 vests in the State Government, this order will not prevent the State Government from initiating appropriate action in accordance with law under the provisions of the Maharashtra Land Revenue

Code, 1966 or any other law.

14. Accordingly, we dispose of the Petition by holding that the impugned communication at Exhibit A is no more in operation inasmuch as, as per the communication dated 6th January 2017, the State Government had stayed the construction only for a period of 15 days and the said period was not extended.

15. We accept the statement made by the learned Senior Counsel appearing for the Petitioner that the amended development permission dated 11th August 2017 does not permit the Petitioner to carry on any construction or development on the land bearing Survey No. 99/2 on Village Kolshet, Taluka and District Thane and that the Petitioner has not carried on any construction thereon.

16. As observed earlier, we make it clear that this order will not prevent the Municipal Corporation as well as the

State Government from initiating an appropriate action in accordance with law.

17. All pending Civil Applications are disposed of.

18. We make it very clear that we have made no adjudication on *inter se* dispute between the Writ Petitioner and the Applicant in the Civil Application No. 282 of 2017.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]