

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 9444 OF 2016

M/s. Nandikeshwar Hotels Pvt. Ltd.

Through its Director

Arun Sheenappa Hegde

...Petitioner

Versus

The State Of Maharashtra

And others

...Respondents

....

Mr. Atul Damle, Senior Advocate a/w. Mr. Hemant Ghadigaonkar, for
the Petitioner.

Mr. N.R. Bubna, Advocate for Respondent No.2.

Mr. R.D. Suryawanshi, Advocate for Respondent No.3.

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CORAM : NARESH H. PATIL, ACTING C.J. &
R. G. KETKAR, J.

DATE : 31st AUGUST, 2018

P.C.

Heard learned Counsel for the parties.

2. The petitioner, who claims to be owner of the subject premises of which a hotel namely Divya Palace is a tenant, seeks following directions :

- “a. That by an appropriate writ, order or direction of this Hon'ble Court direct the Respondent No.2 to take the appropriate action pursuant to representation made by the Petitioner vide representation vide Advocate letter dated 22.06.2016 (Exhibit-H hereto) and representation dated 28.06.2016 (Exhibit-I hereto) in respect of structure i.e. known as Divya Palace situated at land bearing Survey No.5, Hissa No.1/2 situate,

lying and being village Kashi (Kashmira) near Dodhia Petrol Pump, Western Express Highway, Taluka and District Thane.

- b. That by an appropriate writ, order or direction of this Hon'ble Court direct the Respondent No.2 to take the appropriate action in respect of structure i.e. known as Divya Palace situated at land bearing Survey No.5, Hissa No.1/2 situate, lying and being village Kashi (Kashmira) near Dodhia Petrol Pump, Western Express Highway, Taluka and District Thane u/s. 260 of Maharashtra Provisional Municipal Corporation Act and also as per the provision of Maharashtra Regional Town Planning Act as per the order dated 10.10.2012 in Writ Petition (Exhibit-E hereto) passed by the Hon'ble High Court.
- c. That the pending and hearing and final dispose of the present Writ Petition, the Respondent No.2 to take appropriate steps against the structure i.e. known as Divya Palace situated at land bearing Survey No.5, Hissa No.1/2 situate, lying and being village Kashi (Kashmira) near Dodhia Petrol Pump, Western Express Highway, Taluka and District Thane u/s. 260 of Maharashtra Provisional Municipal Corporation Act and also as per the provision of Maharashtra Regional Town Planning Act.”

3. Learned Counsel appearing for the petitioner submits that a show-cause notice dated 25.6.2012 was issued by respondent No.2 Corporation addressed to respondent No.3 in respect of the unauthorized construction. Respondent No.2 - Corporation passed an order on 21.7.2012 to demolish the area

mentioned in the said order. The petitioner purchased the subject property in the year 2011. Respondent No.3 was the existing tenant at the relevant time of execution of the conveyance deed between the original owner and the petitioner herein. It is further submitted that a Petition came to be filed being Writ Petition No.8829/2012 by respondent No.3 herein challenging said show-cause notice. By order dated 10.10.2012, the petition was disposed of. Paragraphs-7, 8 and 11 of the order read as under :

- “7. In view of this discussion, we have no hesitation in quashing and setting aside the impugned communication, exhibit P, dated 25.6.2012 and the consequential decision taken by the Authority dated 21.7.2012. To get over this position, Counsel for the Corporation was at pains to persuade us to take the view that the decision dated 21.7.2012 rendered by the Ward Officer holding that the structure in question is unauthorised should be maintained as the petitioner had failed to produce any document to the contrary within the specified time. The argument, though attractive, at the first blush, does not commend to us. Inasmuch as, if the foundation on the basis of which the action proceeded is set aside, the question of upholding the decision of the Ward Officer does not arise. The only proper course is to give liberty to the Corporation to start the process afresh by giving proper show-cause notice to the petitioner so that the petitioner may respond to the same and produce evidence to establish the fact that the structure referred to in the said show-cause notice is authorised and/or tolerated structure which

aspect will have to be considered by the Authority in accordance with law.

8. Accordingly, the impugned communication, exhibit P, as well as the decision at exhibit A are quashed and set aside with liberty to the Corporation to proceed in the matter afresh in accordance with law, if so advised. Those proceedings will have to be proceeded on its own merits, uninfluenced by any opinion recorded in the impugned decision, which has been set aside in terms of this order. Further, this decision is not an expression of opinion either way in favour of the petitioner that the structure referred to in the communication, exhibit P, is authorised and/or tolerated one. That is a matter to be considered by the appropriate authority after taking into account the documentary evidence to be produced by the petitioner in the proposed action on its own merits.
11. We hope and trust that the Commissioner of the Corporation will enquire into the fact as to why such vague, incomplete and misleading notice was issued by the concerned official to the petitioner and take that matter to its logical end, if so advised. Copy of this order be forwarded to the Commissioner of the Corporation for information and necessary action.”

4. Learned Counsel appearing for the petitioner further submits that on 17.12.2015 National Highways Authority issued notice during the road-widening exercise conducted by said Authority. Some part of the subject structure of the hotel came to be demolished. On 21.2.2015, an order came to be passed by the

Corporation on the application of respondent No.3 to carry out certain repairs on certain conditions as stipulated in the said order. Said order came to be passed under Section 265A(4)(5)(6) of the Maharashtra Municipal Corporations Act, 1949 (Exhibit 'O').

5. Learned Counsel for respondent No.3 submits that consequent to the said permission/order, repair work was carried out and he started conducting the hotel and lodging business. Respondent No.3 is still continuing to carry on said business. Certain photographs are also placed on record. Learned Counsel for respondent No.3 submits that prayer for direction to demolish entire building may not be granted. The petitioner has an alternate efficacious remedy being a landlord. The petitioner, being a landlord, wants to get respondent No.3-tenant evicted by approaching the Corporation authorities and to get the building demolished so that the landlord would utilize the open plot for some other purposes.

6. During the course of hearing, learned Counsel for the petitioner placed on record a copy of the show-cause notice issued by the Corporation against respondent No.3 dated 22.8.2017 as also the order passed by the Corporation dated 22.2.2018 in

respect of the illegal construction carried out by respondent No.3. By order dated 22.2.2018, the Designated Authority directed the area mentioned in the said order to be demolished. He submitted that the show-cause notice and the order relates to the same subject structure. Both learned Counsel for respondent No.3 as also respondent No.2 Corporation submit that they are not aware of any such notice and the order passed thereon and they are not instructed to make any statement. Both these documents are taken on record and marked 'X' collectively.

7. Mr. Suryawanshi, on instructions, submits that a Suit was filed by respondent No.3 being Regular Civil Suit No. 240/2018 and there is an order of status quo regarding existence of suit structure. In support of this submissions, he has tendered a copy of order dated 12.3.2018 passed below Exhibit-12 in R.C.S. No.240/2018. Same is also taken on record. In view of this, parties are at liberty to resort to appropriate remedies in the pending suit, if any. With these observations, Petition stands disposed of.

[R. G. KETKAR, J.]

[ACTING CHIEF JUSTICE]

Deshmane (PS)