

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
PUBLIC INTEREST LITIGATION NO. 218 OF 2014

Mr.Pravin Laxman Mhapalkar .. Petitioner
Vs.
The State of Maharashtra and ors. .. Respondents

None for the Petitioner.

Mr.M.M. Pabale, AGP for Respondents No. 1 to 3.

Mr.Atul Damle, Senior Counsel a/w Ms.Swati Sagvekar, for
Respondent No.2.

Mr.V.P. Sawant I/b Mr.Sandeep V. Mahadik, for Respondents
No. 4 to 8.

Mr.R.S.Datar, for Respondent No.9.

Mr.D.R.Shetty, Court Receiver a/w Mr.K.D.Raorane, Master
(Adm.)

**CORAM : NARESH H. PATIL, CHIEF JUSTICE &
M.S.KARNIK, J.**

DATE : 28th NOVEMBER, 2018

ORDER (PER M.S.KARNIK, J.) :

. None appeared on last several occasions. Today also
none appears for the Petitioner. With the assistance of the
learned Counsel for the respondents, we have gone through the
record. We have gone through the Petition and the counter file
on behalf of the Respondents.

2. In this PIL, the Petitioner has prayed for the following reliefs :

(a) That this Hon'ble Court be pleased to issue appropriate writ order and direction directing the Respondent Nos. 1 to 3 jointly or severally to remove the entire illegal construction made by the Respondent Nos.4 to 9 in collusion and connivance with each other on the plot of land bearing Survey No. 14(pt) situated at Village Diwanman, Tal.Vasai, Dist.Thane as well as Plot of Land bearing Survey No. 175, 176 situated Diwanman, Tal.Vasai, Dist. Thane which is reserved for public garden, public road and salt cultivation on such terms as this Hon'ble Court may deem fit and proper and also direct the appropriate authorities to investigate the matter and take appropriate step against all such person responsible for the same.

(b) That this Hon'ble Court be pleased to issue appropriate writ order and direction directing the Respondent No.1 to major the entire plot of land bearing Survey No. 14(pt) situated at Village Diwanman, Tal. Vasai, Dist. Thane as well as Plot of Land bearing Survey No. 175, 176 situated Diwanman, Tal. Vasai, Dist. Thane and submit a detail report before the Hon'ble Court and after perusing the said report this Hon'ble Court be pleased to issue necessary direction to appropriate steps against all such

responsible persons on such terms as this Hon'ble Court may deem fit and proper.

(c) Interim and ad-interim reliefs in terms of prayer (a) & (b) above.

(d) Cost of the present Petition be provided for.

(e) Any other and further reliefs as the nature and circumstances of the case may require.

3. The Petitioner claims to be a political leader and also a social worker residing at Nalasopara, Taluka Vasai, Dist. Thane. He claims to be concerned with the interest of people at large and more particularly the people residing within the vicinity of Vasai Virar and Nalasopara Dist. Thane. The Petitioner noticed that in respect of building named as 'Padamraj' consisting of ground plus 14 storey, illegal construction is being carried out by the Respondents No. 4 to 9 in collusion and connivance with the Respondent No.3.

4. Respondent No.1 is State of Maharashtra and

Respondent No.2 is Vasai – Virar Corporation. Respondent No.3 is a Tahsildar of Vasai. Respondent No.9 is a Developer.

5. The Petitioner relied upon a map which is at Exhibit 'A'. According to him, the portion which is shown in Red is reserved for public garden. Some portion of the Survey No. 175 & 176 are reserved for salt cultivation and belongs to State of Maharashtra. It is the Petitioner's contention that Respondents No.4 to 9 have used TDR in respect of Survey No. 81 and Survey No. 82 village Dongare, Virar, Dist. Thane and have utilized the said TDR for constructing the 14 storey building. The building is constructed without any approved plans. The Petitioners have manipulated and forged documents to show the legality of the said structure which is in contravention of provisions of law.

6. It is the Petitioner's contention that without measuring the plot in question, though the same is reserved, Respondents No. 4 to 9 are proceeding with the construction of

the building without any sanctioned plan. The Petitioner made several representations to take action against such illegal constructions on public property. According to Petitioner, no action is being taken by Respondents No.1 to 3 against Respondents No. 4 to 9.

7. When this PIL was listed on 16/11/2016, this Court was pleased to pass the following order.

The complaint raised in the present Public Interest Litigation (PIL) is that beyond the permissible limit, there is construction of ground + 14 storey building on survey No.14(Part). Apparently, this survey No.14 is situated at village - Diwanman, Taluka Vasai in District- Thane (now Palghar). Survey Nos.175 and 176 are adjacent to Survey No.14 as spelt out in this PIL. According to the petitioner, even these two Survey Nos.175 and 176 are misused unauthorizedly by the party respondents.

2. According to respondent No.2- Corporation, on verification it is found that Survey Nos.175 and 176 are Government lands and the Corporation has not permitted any construction on the said lands. According to the counsel appearing for the Corporation, so far as Survey No.14, necessary permissions are taken.

3. Unfortunately, the petitioner is absent on earlier adjourned dates as well as today. As per the scenario made out in this PIL, the allegation is that the Corporation officials are aware of the illegalities committed by the party respondents. Now, the person who has to tell us whether there is truth in the statement made by the opposite side regarding malafide intention in filing of this PIL, neither the petitioner nor his advocate are present before this Court. According to the party respondents, the intention of the petitioner in filing this PIL is to extract money from the party respondents since such course of action was adopted by the petitioner with regard to another builder who had filed a criminal complaint against the petitioner and an FIR came to be registered in this regard.

4. In the above circumstances, we have no assistance of the petitioner and his counsel to ascertain the factual situation. Someone has to verify whether the building which has already come up on Survey No.14 is in accordance with the sanctioned plan and whether the plan, if sanctioned, is in accordance with the building bye-laws and zonal regulations. It is also necessary to secure information whether Survey Nos.175 and 176 are meddled with by the party respondents as contended by the petitioner.

5. The Court Receiver, High Court is directed to verify the

aforesaid facts after visiting the spot and also verify the necessary documents. All the parties to this PIL are directed to assist the Court Receiver by furnishing documents and also in inspection of the spot. The Court Receiver is permitted to take assistance of the Surveyors and other officials, if required, for the above purpose.

6. Initially, deposit of Rs.25,000/- shall be made by respondent Nos.4 to 8 and depending upon the outcome of the inspection and report thereof, necessary orders will be made so far as expenditure for the Commission. Respondent Nos.4 to 8 are permitted to deposit the amount with the Court Receiver directly. The entire exercise shall be completed and report shall be filed by the Court Receiver within four weeks from today.

Stand over to 14th December 2016.”

8. By an order dated 22/12/2016 this Court had directed Registry to implead CIDCO as party Respondent. When the matter was heard on 04/12/2017, this Court had directed learned Counsel appearing for the Corporation and learned AGP to take instructions in respect of nature of work being carried out/to be carried out on the property bearing Survey Nos.175 & 176. The Court Receiver was directed to furnish copy of the

report to learned AGP.

9. Shri V.P. Sawant learned Counsel appearing for the Respondents No. 4 to 8 invited our attention to the affidavit filed by the Respondent No.7. The objection is taken in the affidavit that the Petitioner is in habit of filing false complaints against developers for securing his unlawful demand under the guise of his political status. It is stated that the Petitioner is Ex-Corporator of the Vasai-Virar City Municipal Corporation. PIL is not in public interest. It is further stated that the Petitioner was arrested by Anti-Corruption Bureau on a complaint made by the builder-developer on the allegation that the Petitioner demanded money/bribe for not proceeding with the complaints filed with Competent Authorities against the complainant therein. It is pointed out that PIL is filed for extraneous consideration. It is further submitted that building in question consists of ground plus 12 upper floors and not 14 as alleged by the Petitioner. It is pointed out that Respondents No. 4 to 9 are not concerned with the Survey Nos. 175 & 176 as these

properties belong to State of Maharashtra and are reserved for salt cultivation. It is denied that they have constructed any building on plot of land bearing Survey Nos. 175 & 176. It is pointed out that construction work is going on in Survey No. 14, Hissa No. 4/1, 4/2A, 4/4, 4/5, 4/2(B) and not on Survey Nos. 175 & 176. The Respondents have denied that entire Survey Nos. 175 & 176 are reserved for salt cultivation, but further stated that only small plot of land from Survey No. 14 Hissa No. 4/1, 4/2A, 4/4, 4/5 4/2B has been reserved for public garden. The said plan at Exhibit 'A' is signed by Respondent No.7 himself on behalf of Respondent No. 8 and same has been approved by the Competent Authority on 17/03/2004. The allegation of manipulation and forging of document is denied. He submits that the constructions is in accordance with the development permission.

10. Insofar as the building No. 2 from Survey No. 14 is concerned, it is submitted that layout has been approved on 05/12/2003 by CIDCO. The Respondents have produced copies

of the permission letter from CIDCO and also approved plan in respect of building No. 2. Building No.2 has been constructed by obtaining occupation and completion certificate from planning authorities. Even in respect of residential building Nos. 2 & 3 from layout of Survey No. 14, Hissa No. 4/1, 4/2A, 4/4 4/5 4/2B, the same has been approved by CIDCO on 17/03/2004. The approved plan indicates that 30 metre DP road has been deleted in DP of 2013 and PG area of earlier plan is maintained. The said buildings were constructed by obtaining occupation certificate from planning authorities. Even the contention that the land in question was never measured is denied by the Respondents and it is stated that the TILR has surveyed the land from time to time.

11. We have also gone through the affidavit-in-reply filed on behalf of the Respondent No.2 - Municipal Corporation affirmed by Mr.Suresh R. Pawar, Assistant Municipal Commissioner. It is pointed out that proposal on plot of land Survey No. 14 Hissa numbers mentioned hereinbefore was

approved by the CIDCO way back in 23/05/2000. At the relevant time, CIDCO was the Planning Authority. Survey Nos. 175 & 178 belong to State of Maharashtra. Insofar as public garden reserved in Survey No.14, it is stated that in the revised plan, public garden reservation has been properly taken care of and not at all disturbed while granting development permission for the proposed construction. The measurements were carried out by TILR when CIDCO was planning authority way back on 07/01/2000 on survey No. 14. Even insofar as the allegation that TDR rights have been misused, Respondent No.2 has stated that it is only after the possession of land bearing Survey Nos. 81 & 82 was surrendered to the Corporation on 03/07/2013 that the development permission to Respondents No. 4 to 9 for as survey No. 14 was granted. The same was granted by Respondent No.2 only after requisite condition of handing over of lands bearing Survey Nos. 81 & 82 of village Dongare was completed by Respondents No. 4 to 9. Similar is the case of plot of land Survey No. 133 which was surrendered by Respondents No.4 to 7 to Respondent No.2. The Development Rights

Certificate was issued to Respondents No. 4 to 9 by Respondent No.2 on 19/06/2014. It is thus stated that the development permission granted by the Respondents is in accordance with law and the portion reserved for public garden is properly taken care of while granting permission. Insofar as Survey Nos. 175 & 176 is concerned, they vest with the State Government and there is no development activities carried on in respect of these survey numbers. Learned Senior Counsel Shri Damle appearing for the Corporation submits that if the construction is in violation of any permission, the Corporation will take appropriate steps in accordance with law against the builder-developer.

12. We have gone through the report submitted by Shetigiri and Associates (Architects & Engineers). We have also gone through the Technical Inspection Report pursuant to the order passed by this Court. It would be material to re-produce paragraphs 4, 5 & 6 and concluding paragraph of the report which reads thus :

“...4. The proposed diverted 30.0 Mts wide D.P. road is yet to be constructed. However some construction activities could be seen outside the Survey No.14, presumed to be towards the said 30.0 Mts wide Road and within Plot bearing Survey Nos. 175 & 176. However, the exact location of this road, which could be ascertained by means of D.I.L.R Survey.

5. The survey no. of the plot of land over which building No.4 is located, could be ascertained by means of D.I.L.R Survey, which was under progress on the day of our inspection.

6. The construction of the building structure appears to be in line with the sanctioned plans amended from time to time. Based on visual findings, the as-built structure is seen to be correlating with the final O.C. Plans of 2015. the services and utilities, which are provided to the structure, are seen to be as per the general codal provisions and standards.

7. Considering the fact that the proposed 30.0 Mts wide D.P. Road is diverted and re-routed, the status of the building structure No.4 would remain unaffected and unaltered and shall conform to the sanctioned amended plans and O.C. plans of 2007, duly sanctioned by Vasai-Virar Mahanagar Palika. Further

the layout plan is also duly approved by Vasai-Virar Mahanagar Palika, under their prevailing development rules and regulations.”

13. Having regard to the conclusions in the report that the proposed 30 metre wide DP road is diverted and re-routed, the status of the building structure No. 4 would remain unaffected and unaltered and shall conform to the sanctioned amended plans and O.C. plans of 2007, duly sanctioned by Vasai-Virar Mahanagar Palika and further the layout plan is duly approved by Vasai-Virar Corporation under their prevailing development rules and regulations, it is not possible for us to conclude that construction is in violation of any development permission.

14. In view of what is mentioned hereinabove, present PIL is devoid of any merits and deserves to be dismissed. PIL is dismissed.

(M.S.KARNIK, J.)

(CHIEF JUSTICE)