

Sharayu Khot.

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

WRIT PETITION NO. 9440 OF 2014

Shri. Rajendra Panditrao Saraf **...Petitioner**

Versus

Pimpri Chinchwad Municipal Corporation & Ors. **...Respondents**

WITH

WRIT PETITION NO. 4383 OF 2013

Shreeniwas Alias Shripad N. Prabhune **...Petitioner**

Versus

The State of Maharashtra & Ors. **...Respondents**

Mr. Shriram S. Kulkarni, for the Petitioner in WP No.9440/14 and for Respondent No. 8 in WP No.4383/13.

Mr. Uday P. Warunjikar, for the Petitioner in WP No.4383/13.

Mr. Deepak Ravindra More, for the Respondents No. 1 to 3 in WP No. 9440/14 and for the Respondents No. 2 to 7 in WP No.4383/13.

Mrs. R.A. Salunkhe, AGP, for the Respondent No. 1 in WP No.4383/13.

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

DATE : 9 April 2018

ORDER :

1. Heard the learned Counsel appearing for the parties. The Petitioner in the Writ Petition No. 9440 of 2014 claims to be the owner of the subject property which is described in paragraph 4 of the said Writ Petition. The 5th Respondent in this Petition is the Petitioner in the Writ Petition No. 4383 of 2013.

2. The challenge in Writ Petition No. 9440 of 2014 is to the notice issued on 21 July 2014 by the 1st Respondent - the Pimpri Chinchwad Municipal Corporation (for short "*the said Corporation*") directing the Petitioner and his Architect to remove two shops illegally constructed on the ground floor and to provide a ramp for approaching the basement of the building which is shown for use as a parking. The first prayer in the said

Petition is for quashing the said notice and for issue of a *writ of mandamus* directing the Municipal Corporation to consider the proposal dated 9 April 2014 as well as the representations dated 14 May 2014 and 3 June 2014.

3. It is not in dispute that the Petitioner made an Application on 9 April 2014 for modification of the development permission granted on 29 January 1998. The said development permission/commencement certificate was renewed on 31 July 1999. According to the case of the Petitioner in the said Petition, as can be seen from the photographs tendered today, he has constructed the building consisting of basement and ground plus three upper floors. The proposal dated 9 April 2014 was for modification of the earlier development permission. By the said proposal, a permission was sought for closing the basement and for providing parking on the ground floor after demolishing the shops on the ground floor. We must note here that by the letter dated 22 April 2014, the Architect of the Petitioner in the Writ Petition No. 9440 of 2014 was informed that the said proposal

has been rejected.

4. As the said proposal has been rejected and the other two representations are for the grant of same reliefs, now the second prayer in Writ Petition No. 9440 of 2014 does not survive.

5. As far as the first prayer is concerned, the learned Counsel appearing for the Petitioner states that out of the two offending shops, one shop has been removed. On instructions, he states that the two shops illegally constructed by him are at two places which are shown as the way to parking in the basement in the sanctioned plan a copy of which is annexed at the page 267 of the Writ Petition No. 4383 of 2013 to the Affidavit of the Petitioner in the Writ Petition No. 9440 of 2014. He reiterates that one shop is already removed. The Petitioner in the Writ Petition No. 4383 of 2013 contends that there is no real removal and only two days back, the rolling shutter on one shop has been removed.

6. However, We need not detain ourselves with the said controversy. The learned Counsel appearing for the Petitioner in Writ Petition No. 9440 of 2014 states on instructions of the Petitioner who is personally present in the Court that both the shops will be removed in its entirety and the places where the shops have been constructed will be restored to the position as shown in the sanctioned plan within a period of one month from today. We accept the said statement. He also states that within the period of three months from today, the Petitioner in the said Petition will construct two ramps as per the sanctioned plan to enable the vehicles to enter the basement parking and to exit from the basement parking. We accept both the statements. In view of these statements, the prayer clause (a) of the Writ Petition No. 9440 of 2014 does not survive. The only other substantive prayer which is prayer clause (b) does not survive for the reasons which we have recorded earlier.

7. Writ Petition No. 4383 of 2013 has been filed by the 5th Respondent in the first Writ Petition. The Petitioner in the

said Petition has purchased and acquired six shops on the ground floor of the said building from the Petitioner of Writ Petition No. 9440 of 2014. The first prayer in the said Petition is for directing the restoration of basement and parking area as per the sanctioned plan. The second prayer is to restore the terrace of the building above third floor by demolishing the pillars on the terrace. The next prayer is for taking action as the building has not been constructed in conformity with the sanctioned plan.

8. It is an admitted position that the building consisting of basement, ground and three upper floors has not been granted occupation certificate. Today, the photographs of the building have been placed on record. One such photograph shows that practically the entire building has been occupied. The Petitioner in Writ Petition No. 9440 of 2014 has made a grievance that the Petitioner in Writ Petition No. 4383 of 2013 has carried out illegal work or construction in the shops which are sold to him.

9. The learned Counsel appearing for the Petitioner in Writ Petition No. 9440 of 2014 states that he has been occupying four residential premises in the building on the upper floors. Thus, the Petitioners in both the Petitions are guilty of committing gross illegalities. Admittedly, the Petitioner in Writ Petition No. 4383 of 2013 has taken possession of the shop premises and has occupied the same knowing fully well that there is no occupation certificate granted by the Municipal Corporation. For these illegalities, the Municipal Corporation will have to take action in accordance with law.

10. Considering the statements made by the Petitioner in Writ Petition No. 9440 of 2014, time deserves to be granted to the Petitioner to make compliances. However, considering the fact that the Petitioners in both the Writ Petitions are guilty of committing gross illegalities, no relief can be granted in both the Writ Petitions.

11. Accordingly, we dispose of both the Writ

Petitions by passing the following order:-

- (i) We accept the statements made by the learned Counsel appearing for the Petitioner in Writ Petition No. 9440 of 2014 on instructions which are recorded in paragraph 6 above. Needless to add that the Petitioner therein will have to construct the ramps as provided in the sanctioned plans after removing two illegally constructed shops;

- (ii) If within the period of one month from today, both the shops on the ground floor are not restored as per the sanctioned plan, the Municipal Corporation shall take action of demolition of the two shops on the expiry of the period of one month from today without any notice to any parties;

- (iii) If the ramps are not constructed within the time specified by the Petitioner himself, the Municipal Corporation shall take action in accordance with law against the said Petitioner and the subject building;
- (iv) As admittedly, the entire building has been occupied though occupation certificate has been granted, we direct the Municipal Corporation to initiate an appropriate action in accordance with law as expeditiously as possible;
- (v) We direct the Designated Officer or any other authorised Officer to visit the building with a view to ascertain whether any other illegal constructions have been made therein, apart from the illegal construction of two shops. If the Officer finds that any illegal construction has been carried out, the Municipal Corporation

shall initiate appropriate legal action for removal of the illegal construction in accordance with law. Needless to add that if any illegal construction has been made on the terrace, even that will also be looked into by the concerned Officer;

(vi) Both the Writ Petitions are accordingly, disposed of;

(vii) Pending Civil Applications do not survive and the same are also disposed of.

12. After the order is dictated, our attention is invited to the complaint dated 2 April 2018 addressed by the Advocate for the Petitioner in Writ Petition No. 9440 of 2014 to the Registrar Judicial – I of this Court about the conduct of the 5th Respondent in the said Writ Petition in the premises of this Court.

13. The learned Counsel appearing for the 5th Respondent on instructions, who is personally present before the Court, states that the said Respondent will tender personal apology to the Advocate for the Petitioner. The learned Counsel appearing for the Petitioner states that if the said apology is tendered, even orally, the matter should be treated as closed.

14. There is an assurance by the 5th Respondent to tender the apology to the learned counsel for Petitioner in Writ Petition No. 9440 of 2014. We hope and trust that the assurance will be complied with. Hence as of today, no further steps are required to be taken on the basis of the complaint dated 2 April 2018 taken on record and marked as “C2” for identification.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]