

psv

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

WRIT PETITION NO.11031 OF 2018

M/s.Arihant Enterprises	.. Petitioner
Vs.	
Bhiwandi Nizampura City Municipal Corporation & Ors.	.. Respondents

**WITH
WRIT PETITION NO.11523 OF 2018**

M/s.Arihant Enterprises	.. Petitioner
Vs.	
Bhiwandi Nizampura City Municipal Corporation & Ors.	.. Respondents

Mr.R.S. Apte, Senior Advocate, i/b. Mr.Sagar Ambedkar for Petitioner in WP No.11031/18.
Mr.R.S. Apte, Senior Advocate, i/b. Mr.Girish Paryani for Petitioner in WP No.11523/18.
Mr.M.J. Bhatt for Respondent Nos.1 and 2 in WP No.11031/18 and for Respondent No.1 in WP No.11523/18.
Mr.Shrikant Vishnupant, DEO, ADTP Bhiwandi Corporation.

**CORAM : NARESH H. PATIL, ACTING C.J.
& G.S. KULKARNI, J.**

DATE : 26th OCTOBER, 2018.

P.C.

Rule in both the petitions returnable forthwith. Respondents waive service. By consent of the parties, heard finally.

WRIT PETITION NO.11031 OF 2018

1. The petitioner, a partnership firm engaged in the business of construction, is before the Court being aggrieved by the notice dated 24th April 2018 issued by the respondent No.1, Bhiwandi-Nizampura City Municipal Corporation (for short, “Municipal Corporation”) under Sections 44 and 45 of the Maharashtra Regional and Town Planning Act, 1966 (for short, “MRTP Act”) and under Sections 258 and 263 of the Maharashtra Municipal Corporations Act, 1949 (for short, “MMC Act”) whereby the petitioner has been called upon to demolish the construction of 7 buildings as undertaken by the petitioner. There is also a challenge to the order dated 5th May 2018 passed by the Assistant Commissioner whereby the entire construction of the petitioner has been declared to be illegal on the same grounds as contained in the notice. The petitioner has prayed for the following substantive reliefs:-

“a. That the record and proceedings of the impugned orders dated 24/04/2018 and 05/05/2018 passed by the Respondent No.1 and Respondent No.2, respectively, be called for and after examining the legality, validity and propriety thereof, the impugned orders dated 24/04/2018 and 05/05/2018 passed by the Respondent No.1 and Respondent No.2, respectively, be quashed and set aside.

b. That the writ of mandamus for writ in the nature of mandamus or any other appropriate writ, order or direction be

issued and the Respondents be directed to forthwith withdraw and cancel the impugned orders dated 24/04/2018 and 05/05/2018 passed by the Respondent No.1 and Respondent No.2, respectively.”

3. The basic premise on which the Municipal Corporation issued the impugned notice dated 24th April 2018 as also the impugned order dated 5th May 2018, is in view of a communication received by the municipal Corporation from the office of the Deputy Lok-Ayukta. This communication was issued in pursuance as a consequence of a complaint of one Shri Parshuram Undaru Naik who had approached the office of the Lok-Ayukta, with a case that the petitioner has undertaken the construction in question, without obtaining an environmental clearance/ approval and the entire construction was therefore illegal. The Deputy Lok-Ayukta after examining the complaint, passed an order dated 2nd April 2018 under Section 12(3) of the Maharashtra Lokayukta And Upa-Lokayuktas Act, 1971 thereby recommending to the Competent Authority-Government of Maharashtra that as the construction of the petitioner was exceeding 20,000 sq. meters and as an environmental clearance was not obtained by the petitioner/developer, it was recommended that action be taken against the construction as per rules and regulations. It was recommended that also a disciplinary action be taken against the officers

who have not followed the rules and permitted the building to be occupied.

4. It is thus not in dispute that the Municipal Corporation has issued the impugned notices in pursuance of the recommendations of the Deputy Lok-Ayukta. The case of the petitioner is that the petitioner was not granted any opportunity of a hearing before the Deputy Lok-Ayukta and the recommendations were made without hearing the petitioner. The petitioner contends that the entire basis of the notices of the municipal corporation as also recommendations of the Deputy Lok-Ayukta ceases to exist, for the reason that the environmental clearance was already obtained by the petitioner and was not brought to the notice of the authorities when the alleged complaint was considered. Our attention is drawn to the environmental clearance dated 12th March 2018 as granted to the petitioner by the “State Level Environment Impact Assessment Authority”. The Corporation does not dispute the fact that the environmental clearance is obtained. However, when asked as to how the impugned notice was issued when the petitioner had already received environmental clearance, the only reason as stated by the learned Counsel for the Corporation is that the municipal corporation was acting under the

recommendations of the Deputy Lok-Ayukta.

6. We were surprised by the stand taken by the Municipal Corporation, we therefore adjourned these petitions on the last occasion for the Municipal Corporation to take instructions as to whether the Municipal Corporation in this situation would withdraw the impugned notices. Today the learned Counsel for the Corporation has tendered an affidavit on behalf of the municipal corporation of Mr. Shrikant Vishnupant, In-charge Assistant Director of Town Planning of the municipal corporation. In the reply affidavit it is stated that the environmental clearance certificate dated 12th March 2018 suffices the purpose of planning authority as it satisfies the requirement under relevant Development Control Regulations subject to the petitioner complying the terms and conditions imposed under the said environment clearance certificate/approval.. Paragraph Nos.2 to 4 of the reply affidavit needs to be noted and read thus:-

“2. I say that reserving the right of the Respondents to file a detailed reply to the Writ Petition if and when required, I am filing this Affidavit in Reply for the limited purpose of answering the query raised by this Hon'ble Court as to whether the certificate issued by State Level Environment Impact Assessment Authority dated 12/03/2018 in favour of the Petitioner, (Annexed at “Exhibit-E” in the Captioned Writ Petition) is sufficient for the purpose of planning authority. In

this regard I say that the said certificate dated 12/03/2018 would suffice the purpose of the Planning Authority as it satisfies the purpose of the Planning Authority as it satisfies the requirement under relevant Development Control Regulations for the said purpose, subject to the compliance by Petitioner of the terms and conditions imposed upon them under the said Certificate.

3. I say that after receiving the said certificate date 12/03/2018 from the Petitioner, the Assistant Director of Town Planning has issued letter dated 12/06/2018 to the Chairmen The Maharashtra Pollution Control Board requesting them to give their opinion upon condition No. XLIV incorporated in the said certificate dated 12/03/2018. Similarly one more letter dated 09/07/2018 has been issued to the Petitioner requiring them to comply with certain conditions. Hereto annexed and marked as "Exhibit-1" and "Exhibit-2" are the copies of the said letters dated 12/06/2018 and 09/07/2018 respectively.

4. I therefore wish to clarify and state that the conditions imposed under the said certificate dated 12/03/2018 are binding upon the Petitioners and the occupation certificate will be used by Planning Authority i.e. respondent No.1 only when such conditions along with other requirements are complied with by the Petitioner. The Respondent No.1 thus reserves its right to take a call on issuance of occupation certificate as per prescribed rules and regulations."

7. We thus observe that in view of the above clear stand of the Municipal Corporation, the Municipal Corporation is satisfied with the petitioner having already obtained environmental clearance dated 12th March 2018. It is thus clear that the entire basis for issuing the impugned notice and the impugned order has vanished. Resultantly, the impugned notice dated 24th April 2018 and the order dated 5th May 2018 cannot be sustained and are required to be quashed and set aside. The writ petition

is accordingly allowed in terms of prayer clauses (a) and (b). No costs.

8. Needless to observe that the petitioner shall be bound by the compliance of the conditions as required under the environmental clearance certificate/order dated 12th March 2018 issued by the State Level Environment Impact Assessment Authority.

Writ Petition No.11523 of 2018

1. This writ petition is filed by the petitioner challenging the order dated 2nd April 2018 passed by the Deputy Lok-Ayukta which was on the complaint of Shri Parshuram Undaru Naik.

2. In view of our above observations, we are of the clear opinion that the petitioner having already obtained an environmental clearance certificate dated 12th March 2018, the impugned order dated 2nd April 2018 passed by the Deputy Lok-Ayukta on the complaint of the respondent No.2 Mr.Parshuram Undaru Naik also cannot be sustained. This petition is required to be allowed. It is accordingly allowed in terms of prayer clause (a). No costs.

G.S.KULKARNI, J

ACTING CHIEF JUSTICE