

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12997 OF 2016

Shri Mahesh Namdev Dandavate & Ors. .. Petitioners
V/s
Collector, Revenue Department, Thane & Ors. .. Respondents

Mr. S.M. Oka with Mr. S.C. Wakankar for the petitioners.
Mr. B.V. Samant, AGP for the State – respondent nos.1, 2 and 5.
Mr. Rohit Pramod Sakhdeo for respondent nos. 3 and 4.

**CORAM: S.C. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.**

DATE : 5TH APRIL 2018

P.C.:

This matter has been placed for passing final order today.

2. On 24th February 2018, this Court after hearing both sides passed the following order:-

“1. On this petition, notice was issued on 31-7-2017.

2. On that day, the notice was specifically waived by the learned AGP appearing for respondent nos.1, 2 and 5. Till date, no instructions have been given nor any affidavit in reply is on record.

3. We direct the Tahsildar, District Thane, to remain personally present in this Court with all original records on 1-3-2018 at 3.00 p.m.”

3. Thereafter on 8th March 2018, a detailed order was passed and running into about five pages. That records as to how the structures termed as unauthorised on Government land have been removed and the site cleared. Thereafter it is handed over to the Thane Municipal Corporation.

4. At that stage, the Thane Municipal Corporation could not confirm before us as to whether it had indeed taken possession of the site or was the same handed over to it. Its advocate sought time to take instructions and particularly to confirm the oral statements.

5. Paragraphs 7 and 8 of the orders passed on 8th March 2018 read as under:-

“7. The Advocate appearing for the TMC is also present in Court and he confirms that the site was to be handed over and he has yet to confirm whether the site is handed over to the TMC but says that there is a beautification and proposed of the area.

8. We do not approve of the conduct of the petitioners as well. After the petition was filed on 25-10-2016 alleging as above, till the notices were issued on 31-7-2017, none of the petitioners ever bothered either to look out from their window or visit the site if the structures were in their vicinity and whether they are existing or have been removed. The Government claims that they are removed much prior to the issuance of the notice on this petition. It is perplexing to note that when the structures were already removed, how were the petitioners not aware of it when the petitioners claim that they were regularly visiting the site. Be that as it may, if the structures are already removed, then let the petitioners'

Advocate take proper instructions. Let also the counsel appearing for the TMC inform the Court whether any panchnama was drawn up when the possession of the site was handed over to the TMC or what the TMC intends to do with that area in the sense how does it desire to protect it from encroachment, safeguard it otherwise and beautify it.”

6. In pursuance of those statements, today an affidavit of the Assistant Municipal Commissioner, Mumbra Ward Committee dated 4th April 2018 has been filed by Mr. Sakhdev. In this affidavit, it is stated that the State Government undertook an Encroachment Removal Drive on 8th December 2016, 9th December 2016 and 10th December 2016. After all encroachments were removed, the site was cleared. The physical possession thereof was handed over to the Thane Municipal Corporation. After taking over the land, the Thane Municipal Corporation has taken steps for conservation, preservation, development and beautification of the premises under a project styled as Smart City Mission. The Thane Municipal Corporation therefore is duty bound to conserve, preserve and beautify the area. It will do so in pursuance of a tender which was floated inviting bids from the interested contractor. Now that process is final, a work order is issued and in terms of the Exhibit R-2 to this affidavit of Thane Municipal Corporation dated 4th April 2018, the project would be completed as soon as possible.

7. On a specific query as to when the project will be completed, particularly bearing in mind the date of the work order, the learned advocate for the Thane Municipal Corporation could not

give a firm commitment. He was not able to tell us as to when the work would be completed and under the above Mission.

8. From the statements made in paragraph 5 and annexure Exhibit R-2, it is evident that the work has started from 20th November 2017. In the circumstances, while we dispose of this petition by accepting all statements made on an affidavit as undertaking to this Court, we direct that this work should be completed as expeditiously as possible and, in any event, by 31st May 2018.

9. Mr. Oka on behalf of petitioners would submit that there is one more unauthorised structure at the site and that has not been removed. Both Mr. Sawant and Mr. Sakhdev have no instructions. We direct that in the event there is any encroachment or unauthorised structure remaining to be removed or demolished at the same site, that also may be removed as expeditiously as possible and on or before 31st May 2018.

10. With the aforesaid directions, the writ petition is disposed of.

(PRAKASH D. NAIK, J.)

(S.C. DHARMADHIKARI, J.)