

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.11634 OF 2018

Vrajratan Home Makers (I) Pvt. Ltd.
Through its Director – Piyush Vasantlal Thakkar ...Petitioner

Versus

Pimpri Chinchwad Municipal Corporation
Through its Commissioner and Ors. ...Respondents

Mr.Girish Godbole, Senior Advocate, Mr.Y.B.Dandekar, for the
Petitioner.

Mr.R.P.Sakhadeo, for the Respondent No.1.

Mr.Arvind Aswani, for the Respondent No.2.

Mr.S.D.Rayarikar, A.G.P., for the Respondent No.3.

CORAM : REVATI MOHITE DERE, J.

DATE : 26th OCTOBER, 2018

P.C. :

1. Heard learned counsel for the parties.
2. By this Petition, the Petitioner has impugned the order dated 11th September, 2018, passed by the Municipal Commissioner, Pimpri Chinchwad Municipal Corporation.

3. Learned Senior Counsel for the Petitioner submitted that the impugned order is cryptic, inasmuch as, no reasons have been set out in support of the findings recorded in the last paragraph of the said order. He submits that the Municipal Commissioner i.e. the Respondent No.1 has by the said order usurped the jurisdiction of the Civil Court and has literally decided the rights of the parties, which is clearly impermissible in law. He submitted that the Petitioner is in possession of the property in question, pursuant to the Development rights and power of attorney given by the owners. He submitted that the names of the owners from whom the development rights were taken by the Petitioner are mentioned in the revenue records. He submitted that pursuant to the registered Development Agreement entered into between the original owners and the Petitioner, the authorities issued a commencement certificate on 18th March, 2013, for construction of a building on the said land. He submitted that the said commencement certificates were revised on two occasions i.e. on 29th December, 2014 and 31st December, 2015. He submitted that the authority had no power under Section 51 of the Maharashtra Regional and Town Planning Act, to revoke and modify the permission/development plan, inasmuch as, there are no allegations of either fraud or allegations of

having taken additional FSI etc.

4. Learned Counsel for the Petitioner tendered an additional affidavit of the Petitioner, which is taken on record. He submitted that the Respondent No.2 had filed a Civil Suit in 2016 and that the Civil Judge Senior Division, Pune, has not granted any interim relief/injunction in favour of the Respondent No.2 and others.

5. Learned Counsel for the Respondent No.1 had on the last date, tendered an affidavit of Makarand Nikam, Executive Engineer (Building Permission and Unauthorized Construction Control Department), working in the office of the Respondent No.1. According to the learned counsel for the Respondent No.1, no interference is warranted in the impugned order. He submitted that the Respondent No.1 had passed the impugned order taking into consideration the Agreement dated 4th February, 1981 and other documents.

6. Learned Counsel for the Respondent No.2 also opposes the Petition and submits that no interference is warranted in the impugned

order.

7. Perused the papers, in particular the impugned order dated 11th September, 2018, passed by the Municipal Commissioner, Pimpri Chinchwad Municipal Corporation, in an enquiry regarding construction/permission to construct granted on Survey No.50/7 and 50/8, on a complaint at the instance of Respondent No.2. The impugned order which is on page 64 and 65 of the Petition, is a cryptic order. No reasons have been set out for coming to the conclusion. The impugned order also does not show that the documents which were filed by the parties have been considered by the learned Municipal Commissioner, Pimpri Chinchwad Municipal Corporation. The question that also arises for consideration is whether the Municipal Commissioner could have decided the issue of title to the property in question, and the applicability of Section 51 of the Maharashtra Regional and Town Planning Act.

8. Having regard to the aforesaid, it would be appropriate to quash and set aside the impugned order.

9. Accordingly, the impugned order dated 11th September, 2018, passed by the Municipal Commissioner, Pimpri Chinchwad Municipal Corporation as well as the earlier order dated 7th August, 2018, granting interim relief, are quashed and set aside. The Complaint is accordingly restored back to its original file.

10. The Respondent No.1 shall decide the aforesaid complaint, as expeditiously as possible and in any event on or before 28th February, 2019.

11. The parties are at liberty to file documents/written arguments, as may be necessary, in support of their claim, before the Respondent No.1 i.e. Municipal Commissioner, Pimpri Chinchwad Municipal Corporation.

12. The learned Municipal Commissioner, Pimpri Chinchwad Municipal Corporation shall pass appropriate orders, after hearing the parties, in accordance with law, uninfluenced by the earlier orders dated 7th August, 2018, and 11th September, 2018. The question of applicability of Section 51 of the Maharashtra Regional and Town Planning Act, is also

kept open as well as the inherent jurisdiction of the learned Municipal Commissioner, to entertain the complaint/ the question of maintainability of the complaint.

13. The parties to appear in the Office of the Respondent No.1 - Municipal Commissioner, Pimpri Chinchwad Municipal Corporation on **14th November, 2018 at 3.00 p.m.**, after which the Respondent No.1- Municipal Commissioner, Pimpri Chinchwad Municipal Corporation, to give dates convenient to him.

14. The Petition is accordingly disposed of on the aforesaid terms. All contentions of all the parties are expressly kept open.

15. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)