

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3599 OF 2019

Vinayakrao S/o Laxman Hiwale

Petitioner

Versus

The State of Maharashtra
& others

Respondents

Mr. S.S. Thombre, advocate for petitioner.

Mrs. A.V. Gondhalekar, AGP for respondent no.1 .

Mr. A.P. Bhandari, advocate for respondents no. 2 and 3.

WITH

WRIT PETITION NO. 3600 OF 2019

Mohd. Afsar Mohd. Ibrahim

Petitioner

Versus

The State of Maharashtra
& others

Respondents

Mr. S.S. Thombre, advocate for petitioner.

Mrs. M.A. Deshpande, AGP for respondent no.1 .

Mr. A.P. Bhandari, advocate for respondents no. 2 and 3.

WITH

WRIT PETITION NO. 3601 OF 2019

Khaled ABdul Hafiz Pathan

Petitioner

Versus

The State of Maharashtra
& others

Respondents

Mr. S.S. Thombre, advocate for petitioner.

Mrs. A.V. Gondhalekar, AGP for respondent no.1 .

Mr. A.P. Bhandari, advocate for respondents no. 2 and 3.

**CORAM : PRASANNA B. VARALE AND
NITIN W. SAMBRE, JJ.
DATE : 18th March, 2019.**

P.C. :

All these three petitions are preferred by the land owners questioning notices dated 15.03.2017 and 31.05.2017 issued by the Corporation and seeking restraintment order restraining the Corporation from taking up any action pursuant to said notice of demolition.

2. The submission of Mr. Thombre, learned counsel for petitioners is, at the relevant time, pursuant to the provisions of Section 52 of the Bombay Village Panchayats Act, as was existing before Amendment 20015, it was the Village Panchayat who was the planning authority and, there exists permission in favour of petitioners wherein they have carried out development activities. He would then urge that the earlier attempt on the part of the local planning authority of taking out similar action like the one pleaded in the petition, has prompted the petitioners to file petition in which, the Division Bench, after extending protection in favour of the petitioners, has permitted them to approach the local planning authority for regularisation of the construction carried out by them.

3. The next limb of submission of Mr. Thombre is, petitioners are neither encroacher nor occupier without title. Based on aforesaid, he would urge that the respondent-Corporation cannot take possession of the property for expansion of the existing National Highway or any other similar nature of development

activity without following due process of law.

4. Mr. Bhandari, learned counsel for respondent-Town Planning Authority, on instructions from the Assistant Director, Town Planning, Municipal Corporation, Aurangabad, submits that possession of the properties owned by petitioners for carrying out development activities viz. Construction of National Highway/service lane etc. need not be carried out without following due process of law. Since the statement is made on instructions, the same is accepted as undertaking.

5. As such, the submission of petitioners that they will be dispossessed without following due process of law is redressed and taken care of.

6. So far as the first limb of submission of petitioners is concerned, the petitioners on earlier occasion have approached this Court through Writ Petition raising the issue as regards holding of appropriate sanction from the planning authority viz. Village Panchayat and as such, the earlier action of issuance of demolition notice was adjudicated by Division Bench of this Court in Writ Petition No.11361/2014 decided on 20.01.2015.

7. This Court, in paragraphs no. 8, 9 and 10 of the said judgment has observed thus :

8. Thus, it is observed that notice by the Administrator is not in conformity with any of the provisions of MRTP Act nor the Administrator is an authority who can be said to have been invested with the powers under section 189 of Maharashtra

Municipal Council, Nagar Panchayat and Industrial Township Act, 1965. Section 189 of the Act refers to authorisation in favour of the Chief Officer of Municipal Council whereas in the instant matter, the notices have been issued by the Administrator. For the reasons recorded above, we are of the opinion that notices issued by the Administrator shall not be acted upon. Although we find certain deficiencies in the notices issued by the Administrator, we refrain ourselves from expressing any final opinion in that regard and these observations shall not have any effect on the action already taken or initiated by the Administrator in pursuance to such notices. These observations made in this judgment shall not be construed as basis for maintaining any action against Administrator or Municipal Council.

9. On consideration of pleadings and facts disclosed before us in all the petitions, it is noticed that petitioners have raised excess construction beyond permissible limit and it is evidence on the face of record. Petitioners, admittedly, have not secured any permission from the planning authority before carrying out development since the plans of construction have not been approved by the planning authority. The development that has taken place in all the cases before us, cannot be said to be a development in adherence to law. In these peculiar facts and circumstances, in order to extend an opportunity to petitioners, we deem it appropriate to grant liberty to petitioners to approach the Chief Officer of Municipal Council with appropriate application for seeking development permission or regularisation of the construction already raised, as the case may be. If petitioners approach the Chief Executive Officer within a period of one month from today, the Chief Executive Officer may take appropriate decision within the framework of law, as expeditiously as possible, preferably within a period of three months from the date of receipt of application/request by petitioners. We direct that respondent Chief Executive Officer or the Administrator shall not act upon the notices and shall not take any adverse action, subject however, to the orders those may be passed by the Chief Executive Officer, after extending an opportunity of hearing to petitioners

as recorded above, for a period of six months from today. It would also be open for the petitioners to approach appropriate authorities including the State Government for protection of their interest and the action of demolition of unauthorised structure raised by petitioners shall be dependent upon such decision of the competent authority or by the State Government. It shall not be inferred that this Court has put any stamp of approval or issued any certification as regards such proposed action of the State or the authorities in respect of regularisation of construction and those actions shall be amenable to legal challenge at an appropriate stage.

10. This Court, while directing issuance of notice and granting interim relief, directed petitioners to deposit sum of Rs. 10,00,000/- with the Administrator, Municipal Council. The amount has been directed to be kept in separate account and it is further directed that the said amount shall not be utilised for any other purpose. We maintain the interim directives issued by this Court while granting interim relief. The question of refund of amount deposited by petitioners shall be dependent upon the decision of the Chief Executive Officer in respect of regularisation of their construction or of the State Government granting them any concession. It would also be open for the petitioners to approach this Court in the event of occurrence of any cause relating to deposit so made. Petitioners are hereby directed not to raise further construction and not to create any third party interest. Petitioners have tendered undertaking to the effect that they would not create third party interest and that they would themselves remove unauthorised construction raised by them in the event the decision of the Chief Executive Officer or any other forum or authority including State Government goes against them. We accept the undertakings furnished by petitioners.

8. This Court, on recording finding that the permission obtained by petitioners from the Village Panchayat alleging the same to be the planning authority, was an erroneous submission

in law as the local planning authority who was entrusted with the power to grant permission for carrying out development vests with the concerned Village Panchayat, has declared that the permissions are illegal. However, the Court has granted liberty to the petitioners to approach the planning authority for seeking sanction of construction carried out or its regularisation.

9. In the aforesaid backdrop, respondent-Corporation appears to have issued notice to the petitioners in exercise of powers under Section 478 of the Maharashtra Municipal Corporations Act. Petitioners extended explanation to said notice. Notice dated 16.03.2019 rejecting the prayer for regularisation is placed on record.

10. The recourse taken by the local planning authority i.e. Aurangabad Municipal Corporation under the Maharashtra Municipal Corporations Act, particularly, having regard to the provisions of Section 478 of the Act, *prima facie* appears to be just and proper. So far as aforesaid observations are concerned, this Court would like to rely upon the observations of the Division Bench in Writ Petition No. 11361/2014 decided on 20.01.2015.

11. That being so, we hardly notice any substance in the submissions raised by petitioners so as to overcome the action initiated by the Corporation.

12. It is also worth to observe here that initially, the petitioners have not placed on record the fact as regards initiation of Writ Petition No. 11361/2014 wherein the right que holding old

permission to carry out development and the legal sanctity of such development activities based on the permission issued by the planning authority, was adjudicated into. The petitions also suffer from suppression of material facts. As such, the petitions stand dismissed.

NITIN W. SAMBRE
JUDGE

PRASANNA B. VARALE
JUDGE

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