

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

**WRIT PETITION NO.3265 OF 2016
WITH
CIVIL APPLICATION NO.1207 OF 2017**

**Vajreshwari Apartment Co-operative
Housing Society Limited and Ors. ... Petitioners**

Vs

Vasai Virar Municipal Corporation ... Respondents

AND

**WRIT PETITION NO.5166 OF 2016
WITH
CIVIL APPLICATION NO.378 OF 2018**

**Om Aniruddha Apartment Co-operative
Society Ltd. ... Petitioner**

Vs

The State of Maharashtra and Ors. ... Respondents

Mr.Mandar Limaye for the Petitioners in
WP Nos.3265/16 and 5166/16.

Ms.Indrayani M.Koparkar for Respondent
No.9 in WP/3265/16.

Mr.S.R.Nargolkar I/b Ms.Swapnil S.
Mohite for Respondent No.7 in
WP/3265/16.

Mr.Atul G. Damale, Senior Counsel I/b
Swati H.Sagvekar for Respondent Nos.1
and 2 in WP/3265/16.

Ms.Ashwini A. Purav-AGP for State.

**CORAM :- S. C. DHARMADHIKARI &
G.S.PATEL, JJ.**

DATE :- JULY 4, 2019

P.C. :-

1. The prayers in Writ Petition No.3265 of 2016 read as under :-

(a) For Writ of Mandamus or a Writ in the nature of Mandamus or for appropriate writ order or direction,

(i) Directing the Respondent to withdraw and cancel the Notices dated 12/06/2014, 03/04/2015 and 07/12/2015 respectively.

(ii) Directing the Respondent not to initiate any coercive steps pursuant to Notices dated 12/06/2014, 03/04/2015 and 07/12/2015 respectively.

(b) For a Writ of certiorari or for a writ in nature of certiorari or for any other appropriate writ order or direction calling for the record and proceedings of Notices dated 12/06/2014 (Exh.A) 03/04/2015 (Exh.B) and 07/12/2015 (Exh.D) and after examining the legality, validity and propriety thereof the impugned Notices dated 12/06/2014 (Exh.A) 03/04/2015 (Exh.B) and 07/12/2015 (Exh.D) be quashed and set aside.

(c) Pending the hearing and final disposal of the above Petition, the Respondent Corporation be restrained from taking any coercive steps pursuant to the Notices dated 12/06/2014 (Exh.A), Notice dated 03/04/2015 (Exh.B) and Notice dated 07/12/2015 (Exh.D).

(d) Pending the hearing and final disposal of the above Petition, the Respondent Corporation be restrained from acting upon and further implementing Notices dated 12/06/2014 (Exh.A), Notice dated 03/04/2015 (Exh.B) and Notice dated 07/12/2015 (Exh.D)

(e) Ad-interim in terms of prayer clause (c) and (d) be granted.

(f) For such other and further reliefs as deemed fit and proper by this Hon'ble Court"

2. The petitioners have filed this writ petition seeking the above reliefs against the Vasai Virar Municipal Corporation. They have also impleaded the private parties to the petition who are the petitioners in the companion writ petition Nos.5489 of 2015 and 7632 of 2016. They have impleaded them as they are claiming right, title and interest in the lands covered by these writ petitions.

3. The petitioners are stating that they are co-operative societies. They are aggrieved and dissatisfied with the notices issued on 12/06/2014, 03/04/2015, 07/12/2015 and 05/03/2016 by the Vasai Virar Municipal Corporation.

4. The notices which are styled, in this case, as a preliminary notice and the final notice highlight that the construction that has been made on the plot and, particularly, described as Survey Nos.113 and 114 is unauthorised and illegal. These two plots of lands are reserved in the Development Plan for 20 feet wide Development Plan Road. Once, the road has to be constructed by using these plots of land, then, there is no question of any residential construction coming at site. The buildings constructed, therefore, are illegal and unauthorised. These are the buildings which are habited by the members of the petitioners before us. They have impugned these notices on the

apprehension that the consequences thereof would be visited on them and directly. It is the roof and shelter over them which will be demolished.

5. However, in these petitions, the petitioners claim that their members have purchased the flats by executing the agreements with the developer. They have invested their hard earned money. There are in all four hundred families residing in these buildings. The Municipal Corporation should consider the regularization of these constructions rather than pushing the four hundred families on road. The petitioners say that the respondent Nos.5 to 8 and 11 to 15 in Writ Petition No.5489 of 2015 filed by Mr.N.M.Raut have in fact urged that these constructions are not affected by the Development Plan Road. The petitioners rely upon that affidavit to urge that the subject notices could not have been issued. The petitioners thus rely upon the pleadings in Writ Petition No.5489 of 2015.

6. After having noted the stand of the Vasai Virar Municipal Corporation justifying the issuance of the notices and not at all placing a contrary version thereto, we do not think that these petitioners can urge that the notices can be quashed. More so, when one of the plot holders, namely, Shantaram Daji Vartak having conceded before us that the buildings have been

constructed on the plots of land reserved for Development Plan Road.

7. If at the time of execution of the development agreement, the members of the petitioners' society have been informed and there was a representation expressly made that the construction is not affected by the proposed Development Plan road, then, nothing prevents these petitioners from relying upon such representation and assurances given to them in the agreements and otherwise in writing and seeking such reliefs as are permissible in law.

8. In the event the private respondents to the writ petition No.5489 of 2015 decide to impugn and challenge the notices on the ground that the construction is not on the plots of lands affected by the proposed 20 feet wide Development Plan Road, then, the petitioners in these petitions can always support that stand and by producing additional materials.

9. Should the developer or the owner not challenge the notices of the Municipal Corporation, then, these petitioners can independently adopt such proceedings as are permissible in law. It may be that the petitioners cannot successfully challenge the demolition notice, but, surely, they all have their remedies intact

as far as the owners and developers are concerned. They can be called upon to pay such compensation towards damages/losses as is suffered by the co-operative societies and their members.

10. We clarify that once this approach was made known to Mr.Limaye, he fairly states that the petitioners may be given an opportunity to either assail the notices or to claim such reliefs as are permissible in law and the writ petitions need not be kept pending. Mr.Limaye would submit that to enable the petitioners to adopt appropriate proceedings in the competent court, the operation and enforcement of these subject notices be stayed for a period of two months.

11. After having heard Mr.Limaye in support of these petitions, perusing the annexures thereto as also the averments therein, we are of the firm view that in these writ petitions none of the factual aspects can be resolved. Even if the Municipal Corporation decides to pursue the notices and cause demolition of the buildings still we do not think that everything is lost for the petitioners before us. They can always seek reliefs against all the private respondents, namely, the owners and developers of the properties in question. We keep open all contentions of both sides in that behalf. We express no opinion as far as these disputes are concerned.

12. However, the order dated 17th March, 2016 passed in Writ Petition No.3265 of 2016 as continued till date shall operate for a period of two months from today. However, that would be on a condition that the petitioners shall not create any third party right nor induct any third party in possession of respective tenements. The petitioners/members shall not make any additions or alterations to the structures either. The competent court, if approached, is not obliged to continue this order and continuation thereof will be entirely in accordance with law. Merely because this Court has passed an order and it is continuing till date will not oblige the trial Court to continue it further. All contentions of both sides in that behalf are kept open.

13. The writ petitions and all connected applications stand disposed of accordingly.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)