

JPP

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

PUBLIC INTEREST LITIGATION NO. 23 OF 2017

Mr. Krishna Chaitanya Penurkar ... Petitioner

V/s.

Vasai Virar Municipal Corporation & Ors. ... Respondents.

Mr. Anil D'Souza a/w. Kartik Vig for the Petitioner.

Ms. Swati Sagvekar for Respondents 1 and 2.

Mr. S.M. Gorwadkar, Senior Advocate I/b. Mr. S.M. Shettigar for Respondent No.3.

Mr. M.M. Pabale, AGP for Respondent No. 8.

***CORAM : PRADEEP NANDRAJOG, C.J. &
N.M. JAMDAR, J.***

DATE : 25 APRIL 2019.

P.C. :-

Heard learned Counsel for the parties. The subject matter of the Petition are three distinct parcels of land. The first parcel of land bearing Survey No. 56/1 (Part), 57A/5, 57A/6, 57A/1, 57/B and 63/3 (part), Village - Tulinj, Taluka - Vasai.

2. As per the Petition the builder is relying upon a

commencement certificate dated 07.07.2010 which permits a singular building having built up area disclosed therein, and the grievance is that a commencement certificate has been forged by the builder. The actual commencement certificate issued granted permission to have a covered area of 2866.49 sq.mtr. and the forged certificate records the same to be 3416.49 sq.mtr. The same has resulted in excess area of 1290.80 sq.mtr. being built upon

3. In respect of this parcel of land the response by the Respondent No.1 affirms the case of the Petitioner and pleads that notices have been issued to the builder under the Town Planning Act, 1996. FIR has also been registered additionally.

4. Mr. Gorwadkar, Senior Advocate, who appears for the builder of said property submits that the builder has applied for compounding/regularization of the excess construction.

5. In respect of this dispute, two distinct grievances need to be addressed. The first is the forging of a commencement certificate to induce innocent purchasers to purchase excess construction. The second is the regularization or compounding thereof.

6. Forging a document is an offence and if the commencement certificate relied upon by the builder of said

property is found to be forged, we direct the Police Authorities to forthwith complete the investigation and file a charge-sheet in the Court of Competent Jurisdiction.

7. The application by the owner of the property seeking compounding would be decided by the first Respondent within six weeks from today and such areas which are non-compoundable would be demolished.

8. The second grievance pertains to construction on Plot No. 4 land bearing Survey No. 377-B, Hissa No. Pt. Village Virar (W), Taluka - Vasai. The building proposed to be constructed is by the name Jai Kunj. The grievance is that the construction has commenced without the commencement certificate. The reply of the first Respondent admits such fact.

9. The reply brings out that notices have been issued to the builder. We direct the first Respondent to pass final orders pursuant to the notices issued by it and if no application for compounding of a structure is filed or if any has been filed, necessary orders to be passed in either eventuality. The building or part thereof which is found unauthorized shall be demolished.

10. The third concerns Survey No.99, Village Sativali, Taluka – Vasai, District - Palghar. As per the Petition, the

commencement certificate permits only 3 buildings to be erected having covered area of 2860.25 sq.mtr. The grievance is that as against 3, 31 buildings have been constructed. The reply of the first Respondent admits said fact and as usual pleads notices issued to the builder. It is pleaded that Regular Civil Suit No. 647 of 2015 was filed in Vasai District Court and injunction has been granted against demolition.

11. We direct the learned Judge before whom the Regular Civil Suit No. 647 of 2015 is pending to decide the application for interim injunction if not already decided. If the application is decided in favour of the builder, we direct the Municipal Corporation to avail appellate remedy. Since this property is sub-judice, we pass no further orders.

12. Compliance with the present order shall be made within six months. The Petition is disposed of.

N.M. JAMDAR, J.

CHIEF JUSTICE