

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 3854 OF 2014**

Grewal Cooperative Housing Society Limited ... Petitioner

Versus

State of Maharashtra & Ors. ... Respondents

ALONG WITH**WRIT PETITION NO. 1212 OF 2016**

Siddhivinayak Shikshan Sanstha ... Petitioner

Versus

The Commissioner,

Pune Municipal Corporation & Ors. ... Respondents

Dr.Arun Kumar Barthakur for the Petitioner in WP No. 3854 of 2014 and for Respondent No. 4 in WP No. 1212 of 2016.

Mr.P. Shah i/b.Kayval P. Shah for Respondent No. 4 in WP No. 3854 of 2014 and for the Petitioner in WP No. 1212 of 2016.

Mr.M.P.Thakur, AGP for the State.

Mr.R.M.Pethe for Respondent No. 2 in WP No. 3854 of 2014 and for Respondent Nos. 1 and 2 in WP No. 1212 of 2016.

Mr.S.R.Nargolkar a/w. Ms. M.Rebello, Mr.Arjun Kadam i/b. Meenakashi Sakhare for Respondent No. 3 in WP No. 3854 of 2014.

Ms.Geeta Suresh Salunkhe – Trustee of Siddhivinayak Shikshan Sanstha along with teachers, present in person.

CORAM : S.J.KATHAWALLA, &

B.P.COLABAWALLA, JJ.

DATE : 29TH NOVEMBER, 2019

P.C. :

1. Writ Petition No. 3854 of 2014 is filed by the Petitioner – Grewal

Cooperative Housing Society Limited (**the Petitioner Society**) seeking direction against Respondent No. 2 – Pune Municipal Corporation (**Corporation**) to demolish the School Building i.e. Shivraj Vidyamandir, unauthorizedly constructed by Respondent No. 4 - Siddhivinayak Shikshan Sanstha in the open space of the Petitioner Society i.e. Survey No.43 / 1 + 2, Somnathnagar, Vadgaonsheri, Taluka Haveli, Dist. Pune – 411014.

2. According to the Petitioner, though the Notices dated 11th July, 2007 and 27th June, 2013 were issued by the Corporation under Sections 478 (1) and 260 of the Maharashtra Municipal Corporation Act, 1949 (**the MMC Act**) directing Respondent No. 3 – Shivraj Vidyamandir and Respondent No.4 to restore the open space of the Petitioner Society, they have till date failed to do so.

2. The relevant facts in the matter are as follow :

2.1. The Petitioner Society is a Tenant Ownership Cooperative Housing Society registered under Section 9 (1) of the Maharashtra State Cooperative Societies Act, 1960 (**the MSCS Act**).

2.2. On 24th October, 1973, the Additional Collector, Pune issued NA Order bearing No. NA/SR/IU/H/32/73 in respect of agricultural land bearing Survey No. 43/1, admeasuring 1 Acre, 37 Are and Survey No. 43/2 admeasuring 5 Acre 19 Are respectively, having total area of 7 Acres, 16 Are, situated at Somnathnagar, Vadgaonsheri, Taluka Haveli, Dist. Pune – 411014 (**the said land**) in favour of the owners and the Chairman of the Petitioner Society.

2.3. On 7th February, 1974, the Petitioner Society purchased the said land by Sale Deed from the owners namely Mr.Namdeo Vithoba Padle, Mr.Damodar Namdeo Padle and Mr. Shankar Namdeo Padle, which Sale Deed was stamped and registered with the office of the Sub Registrar, Haveli-II, Pune on 8th February, 1974.

2.4. Therefore, admittedly the said land is owned by the Petitioner Society.

2.5. The grievance of the Petitioner Society is that the Respondent No. 4 started the School on Plot No. 41, which is not owned by the Petitioner Society but is owned by Respondent No. 6. Thereafter, sometime in the year 1995 the Respondent No. 4 extended their activities on the open plot of the Petitioner Society. When the Petitioner Society objected to the same, the Respondent No. 4 wrote a letter dated 29th February, 1997 to the Petitioner Society, wherein Respondent No. 4 sought cooperation of the Petitioner Society for about a year or two to enable them to look for a bigger space and remove themselves from the open plot of the Petitioner Society.

2.6. Respondent No. 4 failed and neglected to comply with the assurances given by them in the letter dated 12th February, 1997.

2.7. On 11th July, 2007 the Corporation issued notice to Respondent No. 4 under Section 471 (1) of the MMC Act to demolish the unauthorized construction on the plot owned by the Petitioner Society and warned Respondent No. 4 that if they fail to do so, the Corporation will initiate police action under Sections 52 and 53 of the Maharashtra Regional and Town Planning Act, 1966 (**the MRTP Act**). Thereafter, the Corporation did not pursue the same because of which the Petitioner Society

continued to call upon the Corporation to demolish the structure, which was admittedly put up by the Respondent No. 4 on the open plot owned by the Petitioner Society. The Corporation again issued notice on 27th June, 2013 under Section 478 (1) of the MMC Act to the Secretary of Respondent No.4. However, the Corporation even thereafter failed to take any steps and avoided to demolish the unauthorized structure compelling the Petitioner Society to file Writ Petition No. 3854 of 2014 before this Court on 1st March, 2014.

3. Left with no answer to the gross facts in the matter which are set out hereinabove, Mrs. Geeta S. Salunkhe, Trustee of Respondent No.4, who is present along with some teachers of Respondent No. 4 states that the offending structure on the plot of the Petitioner Society shall be vacated and demolished by the trustees on or before 31st May, 2020. The statement is accepted. Ms.Salunkhe also undertakes to file a written undertaking on or before 3rd December, 2019 at 11.00 a.m. signed / executed by herself as well as the other trustees of Respondent No. 1 namely Mr.Dilip More – Chairman, Mr.Namdev Aahuti – Member / Trustee, Mr.Kishor Deshmukh – Trustee, Mr. Ashok Dhere – Trustee, Mrs.Manisha Jagtap – Trustee, Mr. Prashant Salunkhe – Trustee and Mr. Vijay Chavan – Trustee to vacate and demolish the entire structure / school building/s on or before 31st May, 2020 and further undertaking that the Trust and / or the trustees shall not seek any extension of time to vacate and / or demolish the said structure/s before this Court or any other Court. The undertakings are accepted.

4. The Petitioner Society is directed to file a fresh Writ Petition against Respondent No. 6 – Mr.Dattatraya Maruti Adhav seeking reliefs as prayed for in prayer Clause (b) of Writ Petition No. 3854 of 2014, if so advised.
5. The undertaking of the trustees of Respondent No. 4 shall be filed in Court on 3rd December, 2019 at 11.00 a.m.
6. The above Writ Petitions accordingly stand disposed off.
7. Though the above Writ Petitions are disposed off, the same be placed on 3rd December, 2019 to file the undertaking by the trustees of Respondent No. 4.

(B.P.COLABAWALLA, J.)

(S.J.KATHAWALLA, J.)