

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 43 OF 2019
IN
PUBLIC INTEREST LITIGATION NO. 74 OF 2013

The Municipal Corporation of City of Pimpri-Chinchwad
and Others .. Applicants

In the Matter Between :

Seema Savale .. Petitioner

Vs

The State of Maharashtra & Ors. .. Respondents

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- Mr. S.R. Ronghe for the Petitioner
 - Mr. P.P. Kakade, GP a/w Mr. B.V. Samant, AGP for Respondent Nos. 1, 5 and 6 - State
 - Mr. Atul G. Damle, Sr. Counsel a/w G.H. Keluskar for Respondent Nos. 2 and 3 / Applicant in CAI 43/19
 - Mr. Y.S. Bhate for Respondent No. 4
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CORAM : S.C. DHARMADHIKARI &
R.I. CHAGLA, JJ.

DATE : NOVEMBER 22, 2019.

P.C.:

1. The applicants in this Civil Application are the Municipal Corporation of City of Pimpri-Chinchwad ("**PCMC**" for short), the Municipal Commissioner of PCMC, the City Engineer of PCMC and the Municipal Secretary of PCMC . The applicants are original respondent Nos. 2, 3, 7 and 8 to the PIL. A copy of this application has been served on other respondents to the PIL and the original petitioner Smt. Seema Savale.

2. The original petitioner - Councillor of this Corporation filed this PIL complaining that the measures taken for urban poverty alleviation by applicant No. 1 - Municipal Corporation are contrary to law. Under that Urban Poverty Alleviation Scheme, this Municipal Corporation is empowered to construct tenements and houses for allotment to weaker sections of the society.

3. Through the PIL, the petitioner has sought a writ of mandamus directing the Municipal Commissioner of applicant No. 1 - Municipal Corporation to forthwith stop all the further construction of this project at Survey Nos. 255 to 258, Chinchwad, Link Road, Patra Shed, Pune. The other relief sought was that the construction already carried out be declared as illegal and violating the Development Control Regulations of PCMC and that the construction is liable to be demolished.

4. On such a PIL, on 9.7.2014, this Court had passed the following order:-

"1. Learned Senior Counsel representing the 2nd and 3rd respondents seeks time to take instructions.

2. Prima facie, we find that there are many illegalities associated with the entire project. In the circumstances, we restrain the second and third respondents from carrying out any further construction and from handing over possession of the tenements which are already constructed. The Public Interest Litigation shall be listed on 11th August, 2014, high upon board."

This order passed on 9.7.2014 continues till date and the present Civil Application is moved to vacate the same. Unfortunately, this Civil Application is pending for more than six months.

5. The applicant in the Civil Application states that a copy of the Civil Application is served on all. It is urged that before this Court could be satisfied by the applicants with regard to the legality and validity of the scheme and the construction activity, so also its overall implementation, the above noted order came to be passed.

6. The applicants have invited the attention of this Court to the fact that four main objections raised by the applicants to the construction are set out in this Civil Application. Apart

therefrom, the argument is that this PIL is filed by a Municipal Councillor, who could have raised every single issue in relation to this project in the house and outside. Therefore, the above order could not have been passed. The order has been passed because this Court was misled in believing that the Authority implementing such a project and carrying out construction has to abide by and follow Section 44 of the Maharashtra Regional and Town Planning Act, 1966 ("**M.R. & T.P. Act**" for short). It must obtain a Development Permission thereunder. That development permission is contained in a document known as 'Commencement Certificate'.

7. At the hearing of this Civil Application, we have invited the attention of Shri. Ronghe appearing for the original PIL petitioner to the statutory provisions and enquired how the PIL petitioner can urge that the PCMC is obliged to apply for and obtain a development permission. He could not answer our query simply because of the language of Section 44 of the Act. This language is plain, unambiguous and clear requiring no application of principles of statutory

interpretation. Section 44 of the M.R. & T.P. Act reads thus:-

"44. Application for permission for development

(1) Except as otherwise provided by rules made in this behalf, any person not being Central or State Government or local authority intending to carry out any development on any land shall make an application in writing to the Planning Authority for permission in such form and containing such particulars and accompanied by such documents, as may be prescribed.

Provided that, save as otherwise provided in any law, or any rules, regulations or by-laws made under any law, for the time being in force, no such permission shall be necessary for demolition of an existing structure, erection or building or part thereof, in compliance of a statutory notice from a Planning Authority or a Housing and Area Development Board, the Bombay Repairs and Reconstruction Board or the Bombay Slum Improvement Board established under the Maharashtra Housing and Area Development Act, 1976.

(2) Without prejudice to the provisions of sub-section (1) or any other provisions of this Act, any person intending to execute (an integrated Township Project) on any land, may make an application to the State Government, and on receipt of such application the State Government may, after making such inquiry as it may deem fit in that behalf, grant such permission and declare such project to be (an integrated Township Project) by notification in the Official Gazette or, reject the application."

On a bare perusal of sub-section (1) which was renumbered as such by Maharashtra Act 22 of 2005, it is clear that except as otherwise provided by rules made in this

behalf, any person not being Central or State Government or local authority intending to carry out any development on any land shall make an application in writing to the Planning Authority for permission in such form and containing such particulars and accompanied by such documents, as may be prescribed.

8. It is not the argument of the PIL petitioner that there is an exception carved out by the rules made and referable to sub-section (1) of Section 44. Therefore local authorities intending to carry out development on any land within the Planning Limits are not required to make application in writing to the Planning Authority for permission. Admittedly, the project land is situate within planning limits. A permission has to be sought in terms of above noted legal provision. Whether PCMC is the local authority or not is another query and that stands answered by the definition of the term "local authority" appearing in Section 2, Clause (15) of the M.R. & T.P. Act. Sub-clause (a) of Clause (15) of Section 2 defines a 'local authority' inter alia to mean any Municipal Corporation constituted under the Bombay Provincial Municipal

Corporations Act, 1949. The PCMC is indeed such a Municipal Corporation.

9. In these circumstances, we do not think that the PIL petitioner could have raised an issue of want of or lack of permission under Section 44 of M.R. & T.P. Act for the development in question. Whatever may be the other grounds or grievances or complaints projected, but, surely this Court could not have passed an order restraining allotment of constructed tenements to those who are eligible. This Court could not have stopped any further construction either. The interim order operating from 9.8.2014 is, to our mind, seriously affecting the implementation of a welfare or beneficial public project. The PIL petitioner is expected to espouse the cause of public or raise grievances of the public with regard to non-implementation or faulty implementation of the public project in the forums available to her as an elected municipal Councillor. If the fault or error projected is with regard to the legality and validity of the project, then the illegality should be writ large on the face of the project. A project meant for

Urban Poverty Alleviation and implemented through the PCMC / local authority / Planning authority could not have been scuttled in this manner by a sitting Municipal Councillor. Therefore, we do not find that the interim order can continue any further. It is vacated forthwith.

10. The Civil Application is made absolute in terms of prayer clause (a).

11. Although we have vacated the interim order, we clarify that we will decide the PIL on its own merits and in accordance with law and the same shall be placed for admission / disposal in normal course.

12. At this stage, the PIL petitioner seeks a stay of this order for a period of three weeks. The argument is that this order is continued for a period of five years and more and should not have been vacated in this manner today. There is no urgency according to the PIL petitioner.

13. We do not think that there is any merit in this submission of the PIL petitioner as she has misled the Court at the inception to secure the order which could not have been passed given the scheme of M.R. & T.P. Act. The request is, therefore, refused.

[R.I. CHAGLA, J.]

[S.C. DHARMADHIKARI, J]

Ravindra
M.
Amberkar

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