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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5224 OF 2019

Melwyn Isidore Fernandes & Ors	...Petitioners
<i>Versus</i>	
Municipal Corporation for the City of Thane, through Commissioner & Ors	...Respondents

Mr YS Jahagirdar, Senior Advocate, with SM Sabrad, for the
Petitioners.

Mr RS Apte, Senior Advocate, i/b AR Pitale, for Respondents Nos. 1
to 3.

Mr Sanjeev Gorwadkar, i/b Sandeep Mishra, for Respondent No. 4.

CORAM: S. C. DHARMADHIKARI &
G.S. PATEL, JJ
DATED: 28th June 2019

PC:-

1. The six petitioners before this Court have instituted this writ petition seeking a direction to the Municipal Corporation to forthwith take action of demolition of one unauthorized structure raised by Respondent No. 4 on a plot of land more particularly described in prayer (b) of the petition.

2. It is stated that this demolition must follow an order of the 2nd Respondent, an official of the Municipal Corporation. Thereafter, the prayer is to direct the respondents to hold an Inquiry

against respondents Nos. 2 and 3 as also other officials for having shielded and protected an unauthorized construction and thwarting the implementation and execution of the order dated 9th February 2018.

3. For properly appreciating the request made, we should refer to the order dated 9th February 2018.

4. In this order itself we find reference to that a complaint made by Our Lady of Mercy Church on 31st January 2018 complaining of an encroachment. The petitioners have annexed a copy of this order of 9th February 2018 which also make reference to several notices issued to one Aditya Builders and a person known as Dilip Bendugade. The notices issued by the Corporation have been replied to by the Aditya Builders. Aditya Builders also attended a personal hearing. Thereafter, one Rudolf Andrades stated to be representing the Church was intimated about the hearing.

5. The background is that Survey No. 189/2/A is stated to have been enclosed by a compound wall and there are encroachments on this land. It is stated that the patra compound is 200 feet in length with iron angle shed. The notice was issued to Aditya Builders and all that the petitioners say is that this is an encroachment on the land belonging to the Church. When Aditya Builders were questioned about this construction alleged to be an encroachment, their response was that on 16th August 2012 M/s. Hiranandani Properties are to have transferred to them this land. The measurements are yet to be taken. However, before they could

pursue the steps for any measurement, the land was encroached by this patra compound. That any such activity at site required permission was brought to notice of Aditya Builder's representative. However, he said that such a permission was not obtained but would make all attempts to obtain it. The order directs removal of the compound wall and iron angles within seven days from the date of receipt of a copy of the order.

6. The Petitioners claim that they are the "beneficiaries" of the St. John the Baptist Church, which is a Public Charitable Trust registered way back in the year 1955, and which has a sister concern/Trust styled as Our Lady of Mercy Church. The Trustees of both Trusts are common. The said Trust was donated a plot of land bearing Survey Nos. 188, 189/2/A, 189/4 and 192/3/B situate at Village Majiwade, Taluka and District Thane. The measurements of these lands are set out in paragraph 4 of the petition and thereafter it is stated that about 21,000 sq mtrs from out of this land was reserved for playground by the Respondent No. 1, Municipal Corporation.

7. The petitioners state that earlier Trustees of the said Trust entered into development agreement with one Hiranandani Properties Pvt Ltd after obtaining permission from the Charity Commissioner. One of the parishioners filed Application No. 4 of 2010 for revocation of the sanction granted under Section 36(1) of the Maharashtra Public Trust Act 1950. The application was pending and during its pendency another application seeking temporary injunction (Exhibit 25) was filed and that was allowed by the Charity Commissioner on 27th January 2014. The Trust as well

as Hiranandani Properties Pvt Ltd were directed to maintain status quo in respect of the property admeasuring 21,000 sq mtrs out of the aforesaid lands owned by the Trust. There are various orders but eventually the application for revocation of sanction invoking Section 36(2) of the Maharashtra Public Trust Act 1950 was rejected on 22nd June 2016. The beneficiary has filed a Writ Petition No. 11117 of 2016. Then it is stated that there appears to have been executed a Deed of Assignment cum Development Agreement with the Respondent No. 3 in respect of 900 sq mtrs of land from and out of 21,000 sq mtrs which is reserved for playground. Now, this is also a transaction with Hiranandani Properties Pvt Ltd. Then in paragraph 9, a very bold statement is made that the Architect on behalf of Hiranandani Properties Pvt Ltd made an application for grant of TDR/DRC for playground reservation No. 7. Hiranandani Properties Pvt Ltd sought development rights certificate in respect of land admeasuring 20,570 sq mtrs spread across three survey numbers. That is said to be affected by the playground reservation. So far as the remaining 430 sq mtrs of land is concerned, there is an old church and pastoral house which was being used for the stay of priest. This is stated to be a heritage structure and the Department of Archaeology has submitted a proposal and already directed the authorities concerned to declare the same as heritage structure. It is, therefore, clear that Hiranandani Properties Pvt Ltd has obtained the DRC in respect of the plot of land which was reserved for playground. The name of the respondent No. 1 – Corporation appears in the property card.

8. Curiously, thereafter paragraph 10 recites that the 4th Respondent-builder has no authority to encroach upon certain

portion of land which is in the residential zone. Not only the 4th Respondent has encroached thereupon (some portion of land bearing Survey No. 189/2A) which is a residential zone but also carried out construction of unauthorized structures. Now the Trust from time to time brought this fact not only to the notice of the authorities but also the police machinery. Thereafter, they made a representation, a copy of which is at Exhibit "C". The representation resulted in inspection being carried out and eventually the order to which we have referred above.

9. This Petition is nothing but an attempt to seek enforcement of that order but without identifying either the lands or the structures apart from demonstrating how the petitioners can claim any right, title and interest therein. When a public charitable trust, which is a body which can be sued and which can sue in its own name, which has a common seal and perpetual succession, and stands on its own in law, does not wish to pursue the case against an alleged encroachment, we do not see how these petitioners can have any standing to take up any such cause. They are not Trustees. They have no right, title or interest of their own in any of these lands. We do not see how such a petition can be entertained and such a request as made in the petition, and particularly in the prayers, can be accepted. We are not deciding a dispute in relation to right, title and interest in the immovable property. We do not see how we can entertain the grievance of the petitioners. The petitioners have not demonstrated and proved their right, title and interest in any land, or in any survey number.

10. The petitioners have been continuously persuading this Court to intervene in its writ jurisdiction by projecting that there is a school which is using the plot as a playground. Now, the earlier orders of this Court have been passed on the footing that the petitioners indeed are interested in protecting the rights of the students. That is why an additional affidavit was filed by the petitioners and stating that the officers of the 1st respondent came to the site on 26th April 2019 and demolished part of the unauthorized construction raised by the 4th respondent but there is still a structure that is not removed in its entirety. This is stated to have been constructed by digging a bore-well and thereafter putting up a structure for repairing cars. Thus, this is a car repair and service centre. That is distinct from a “parking space”. How this Court was persuaded to refer to a parking area or parking space being utilized by whom and for what purpose remains unexplained. It is also not clear whether the petitioners are referring to some portion as a playground or a immovable property in which certain persons are claiming interest.

11. Today an affidavit is filed by respondents Nos. 1 to 3 which demonstrates that there are two bore-wells out of which one bore-well is non-functional and damaged. The second bore-well is in working condition and it is used to cater the need of a housing society. This housing society is a four-storey building. In the open space there was a automobile service centre which was demolished by anti-encroachment squad on 26th April 2019. Photographs of both the bore-well as also the buildings and the encroachment allegedly made but removed are annexed to this affidavit.

12. The inspection revealed that in the open space cars owned by the members of the housing society were parked. On enquiry at the spot it was revealed that two closed garages were standing on the land. These garages were licensed by the State Government. Thus this is the inspection report and which is submitted. That inspection report, a copy of which is Exhibit “R4” to this affidavit, reveals that the garage/service centre construction has already been removed. The rest of the construction is neither claimed to be unauthorized nor suddenly appearing at the site. On the other hand, a reference is made to the open space and adjacent thereto of a construction of four-storey building.

13. We do not think that the petitioners are espousing the cause of any school far from any Public Charitable Trust. They appear to be busybodies who wish to seek intervention of this Court in removing construction activity carried out by the 4th respondent-Builder. In turn, the 4th respondent say that it claims rights from Hiranandani Properties Pvt Ltd. This entity is not before the Court. There are no details nor particulars of any construction activity much less by the cooperative housing society. There are absolutely no details of what land is claimed by the school and what is covered by its building and what portion adjacent to it is used as a playground.

14. Thus it is clear that the petitioners cannot be assisted in writ jurisdiction when their purpose in bringing this litigation appears to be lacking in bona fides. The whole attempt is to somehow reach the construction activity carried on by the builders and developers. In the absence of necessary parties, proper identification of the

immovable properties, we do not think that we should assist the petitioners. This is a gross abuse of the writ jurisdiction of this Court. To our mind, we must hold the petitioners responsible for wasting the time of this court. The churches are parties to the alienation of their immovable properties in favour of M/s. Hiranandani Properties and they have not disowned the documents in that behalf. Such being the state of affairs, the litigation may have been initiated to gain something for oneself. The motive and purpose is highly and doubtful.

15. In the circumstances, we do not think that we should indulge the writ petitioners any further. The writ petition is dismissed with costs quantified at Rs. 2 lakhs. The amount of costs is to be paid to respondents Nos. 1 to 3 within six weeks from today, failing which they can be recovered as arrears of land revenue.

(S. C. DHARMADHIKARI, J)

(G. S. PATEL, J)