

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6904 OF 2019

Kalyan Phool Market Vyapari Sanghtana
and Ors.

... Petitioners

versus

The Commissioner and Ors.

... Respondents

Mr.Dilip Bodake for the Petitioner.

Mr.A.S.Rao for Respondent No.1.

Mr.V.M.Mali, AGP for State.

Mr.Kirit J. Hakani for Respondent No.3.

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

DATE :- OCTOBER 14, 2019

P.C. :-

1. Since the pleadings are complete and we have heard detailed arguments of both sides, we are disposing of this writ petition at the stage of admission itself.

2. Rule.

3. Respondents waive service. By consent, rule is made returnable forthwith.

4. By this writ petition under Article 226 of the Constitution of India, the petitioners challenge a decision of the Kalyan-Dombivali Municipal Corporation issuing a stop-work notice directing stopping of a construction which has commenced over a piece or parcel of the land, details of which are more particularly described in the stop-work notice dated 27th November, 2017, copy of which is at page 164 of the paper-book (Exhibit 'N'). The notice is addressed to the Agricultural Produce Market Committee, Kalyan and the Architect-M/s Shashi Prabhu and Associates, Mumbai.

5. The petitioner No.1 before us is a Society of the Traders dealing in flowers and is known as the "Kalyan Phool Market Vyapari Sanghtana". The respondents before us are firstly the Commissioner of the Kalyan-Dombivali Municipal Corporation ("K.D.M.C.", for short), the Assistant Director of Town Planning-K.D.M.C., the Kalyan Agricultural Produce Market Committee ("A.P.M.C.", for short) and Directorate of Marketing, Maharashtra State, Pune.

6. The facts necessary for disposal of this writ petition lie in a very narrow compass. Petitioner No.1, though registered as a Trade Union, is styling itself as a Society and its own members,

who are traders and small hawkers are carrying on trade and business of selling flowers in the premises of the third respondent-AP.M.C. They have been allotted small galas/platforms to carry on their business.

7. Survey No.288 admeasuring 3825.20 sq.meters situate at village Kalyan, Taluka Kalyan, District Thane is owned and possessed by the third respondent-A.P.M.C. The said plot of land was surrendered for a specific purpose, namely, shifting of vegetable hawkers by a letter dated 5th December, 1995 to the first respondent-K.D.M.C. That was reserved for amenity purpose. In the development plan, this reservation was clamped and the Municipal Corporation, being the planning as well as the acquiring authority, required this plot/property for developing the amenities. After discussions and deliberations, this plot of land was agreed to be surrendered free of cost and for the public purpose of constructing the vegetable market by the K.D.M.C. It has taken over the plot and there is an agreement to that effect dated 22nd December, 1995. The term and condition, *inter alia*, is that the K.D.M.C. shall develop the property admeasuring 3825.20 sq.meters for a public purpose, namely, vegetable market. The members of the petitioner No.1/Association and other flower traders were carrying on business from the existing

flower market yard. There is a shed from which this business was carried on, but which shed is located within the main market yard. The present flower market shed was constructed by erecting small platforms within the shed by respondent No.3 in the year 1996. The platforms were erected to accommodate small vegetable hawkers carrying on business in the vicinity of Kalyan Railway Station. On account of their business from Kalyan Railway Station, there was traffic congestion and uncontrollable crowding. In the larger public interest, they had to be shifted and, therefore, respondent No.3-A.P.M.C. shifted these hawkers to the platforms within the market yard. There were also the flower traders. The shed deteriorated for want of maintenance and regular repairs. It was in a dangerous and ruinous condition. Bearing in mind such a state of affairs, the A.P.M.C. commenced construction of a flower market/flower market platforms and in that regard, the necessary permissions were obtained from the K.D.M.C. The proposals were forwarded through an Architect. It is styled as a reconstruction proposal. That proposal was examined by the K.D.M.C. and it granted an approval thereto. A commencement certificate was issued on 7th April, 2017 on certain terms and conditions.

8. After the proposal was sanctioned and there was an agreement executed between the respondent No.3-A.P.M.C. and the traders, it was agreed that out of 522 occupants, 196 are the tenants of A.P.M.C., 210 flower and 116 vegetable vendors are tenants of the Municipal Corporation and they should be accommodated in the reconstructed platforms. The Municipal Corporation also agreed that the flower vendors shall be tenants of the Municipal Corporation and the Corporation can recover the rent from them. The structural engineer made the necessary audit and, therefore, what we have on record is that the existing structure was in a bad condition classified as "C1" and requires demolition. It is in these circumstances that the proposal for reconstruction was mooted and later on accepted. We are not concerned with the acceptance, but what we find is that once there is a development permission and the whole project is approved and ratified by all parties, individual agreements with flower traders are in force, then there are hindrances and obstacles. In paras 17 and 18, it has been stated that the agreement of 7th April, 2017 was not executed even though it was necessary to be executed and, therefore, until the execution and registration thereof, the work at the site should be stopped.

9. Hurdles were also placed by certain traders and they had filed a civil suit. That came to be contested and jointly by the K.D.M.C. and A.P.M.C. It is thus clear that with these hurdles, including the litigation, the expectation was that the project should be implemented at the earliest.

10. Now, a stop-work notice has been issued. There have been subsequent meetings, but the work is not allowed to progress at site.

11. A reply affidavit has been filed and we must note the reply firstly of the A.P.M.C. It virtually agrees with every statement of fact as set out in the petition. It says that it is a statutory body and functioning under the provisions of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963 and the Maharashtra Agricultural Produce Market (Regulation) Rules, 1967. The object of the Committee is to regulate the marketing of agricultural produce, for example grain, fruits, flowers, vegetables etc. in market areas and to provide facilities to the agriculturists to sell their agricultural produce and the purchasers to purchase it. There is a market yard and the details of how that market yard was conceived are set up. The A.P.M.C. agrees that there was an agreement executed

with the K.D.M.C. dated 22nd December, 1995 for relocating the vegetable hawkers in the premises of the A.P.M.C. There was an agreement to execute a conveyance in favour of the K.D.M.C. However, it is stated that though the otlas/platforms were allotted to the vegetable vendors, some of them abandoned the A.P.M.C. premises and went back to the site from where they were removed earlier. The whole purpose of handing over the land and executing the agreement with the K.D.M.C. was thus frustrated. It is claimed that the possession of the area is jointly with the K.D.M.C. In other words, though the market yard and market area are within the control of the A.P.M.C., insofar as the portions where the rehabilitation of the vegetable vendors earlier located at Kalyan railway station is concerned, that is in possession of the K.D.M.C. and the A.P.M.C. The first respondent was never in exclusive possession. Thus, the A.P.M.C. sets out the real nature of the dispute and why the agreement of 22nd December, 1995, according to it, could not fructify into a conveyance. Now, there are various documents referred in the A.P.M.C.'s affidavit with which we are presently not concerned. We are only trying to find out the justification for issuance of the stop-work notice.

12. Mr.Dilip Bodake appearing on behalf of the petitioners would urge that neither the K.D.M.C. nor the A.P.M.C. has been

able to provide any justification or legal support to the issuance of a stop-work notice. He would submit that the power to issue such a notice is traceable to Section 267 of the Maharashtra Municipal Corporations Act, 1949. Mr.Bodake would submit that there is a development permission granted by the planning authority, namely, the K.D.M.C. in favour of the third respondent and the Architect, who made the application in that behalf. That development permission is not yet cancelled. That the development is on certain terms and conditions contained in commencement certificate is not disputed. However, for issuance of stop-work notice, the parameters set out in the provision have to be satisfied and fulfilled. The first thing is that these parameters should be attracted and they are not attracted in the facts and circumstances of the present case.

13. Mr.Hakani appearing on behalf of the A.P.M.C., consistent with the stand taken in the affidavit-in -reply of the A.P.M.C. (respondent No.3), would submit that the dispute in relation to the agreement of 22nd December, 1995 cannot be a valid ground to issue a stop-work notice.

14. Mr.Rao appearing on behalf of the K.D.M.C. (respondent No.1) invited our attention to the affidavit in reply of the K.D.M.C.

to submit that the stop-work notice has been issued by the competent authority. Apart therefrom, there is a very good reason to issue the stop-work notice. The stop-work notice has been issued because the agreement has been executed between the then Administrator of the K.D.M.C. and the Chairman of respondent No.3. The agreement was that the third respondent will hand over the land admeasuring about 3825.20 sq.meters for the purpose of rehabilitating the flower market/flower vendors, who were situate in other part of the Corporation area. It was also agreed that Amenity Space (A-2) admeasuring about 3825.20 sq.meters will be handed over to the Corporation without any compensation. It is in view of this agreement that the commencement certificate was granted for buildings to be constructed on the condition that this plot of land will be handed over.

15. The completion certificate and part completion certificate are issued in favour of respondent No.3 for certain buildings. However, a registered Deed has not been executed in favour of the K.D.M.C. nor is the name of the K.D.M.C. mutated in the revenue records. Though called upon, the A.P.M.C. is not willing to comply with its part or its obligation under the written agreement. It is in these circumstances and when the K.D.M.C. noticed that the

A.P.M.C. is trying to seek permission through the fourth respondent to transfer the land under reservation to the K.D.M.C., but was not doing so, that it had no alternative but to issue the stop-work notice. The whole purpose for which the K.D.M.C. is seeking to obtain the land is a public purpose. Now, the A.P.M.C. is trying to wriggle out of the contract. Our attention is invited to paras 8 to 11 of the affidavit-in-reply in support of the argument that the stop-work notice is rightly issued. Mr.Rao faintly suggested that if the stop-work notice is issued but if the real grievance is that the development permission is conditional and such conditions are one sided or onerous or exorbitant, then the A.P.M.C. should file an appeal under Section 47 of the Maharashtra Regional and Town Planning Act, 1966 (“**the MRTP Act**”, for short) and if that remedy is availed of, the K.D.M.C., equally, will place its version before the State Government, which will take the final call.

16. On the above materials, we have heard extensively the parties and we find that we must refer to the stop-work notice in some details with a view to appreciate the nature of the controversy. The stop-work notice does not dispute that the agreement has been executed so as to shift and relocate the vegetable vendors from other areas within municipal limits to the

A.P.M.C. premises. The A.P.M.C. premises is presently dilapidated and that there was a request made to redevelop the property. The K.D.M.C. allowed the proposal and passed the necessary Resolutions at its general body meeting, but it was on condition that the amenity space/land, A-2 admeasuring 3467.01 sq.meters should be handed over to the K.D.M.C. That is how the commencement certificate was granted. The A.P.M.C. was permitted to avail of the benefit of making a construction of ground plus one upper floor known as the commercial building and the commencement certificate in that regard has been issued. However, Condition No.39 of that commencement certificate mandates that before commencing the development, the Municipal Corporation should be handed over a Deed in terms of its Memorandum of Understanding with the Municipal Corporation dated 7th April, 2017 so that the initial agreement and Deed are registered and the ownership rights vest in the K.D.M.C. or the property vests in the K.D.M.C. This vesting has not taken place and this is a real reason for issuing the stop-work notice.

17. Pertinently, this stop-work notice is not issued by the designated authority, but by the Assistant Director of Town Planning of the K.D.M.C.

18. Section 267 of the Maharashtra Municipal Corporations Act, 1949 reads as under :-

“267. (1) If the Designated Officer is satisfied that the erection of any building or the execution of any such work as is described in Section 254 has been unlawfully commenced or is being unlawfully carried on upon any premises he may, by written notice, require the person directing or carrying on such erection or execution to stop the same forthwith.

(2) If such erection or execution is not stopped forthwith, the Designated Officer may direct that any person directing or carry on such erection or execution shall be removed from such premises by any police officer and may cause such steps to be taken as he may consider necessary to prevent the re-entry of such person on the premises without his permission.

(3) The cost of any measure taken under sub-section (2) shall be paid by the said person.”

19. A perusal thereof would show that it appears under the sub-heading “Works unlawfully carried on”. The Chapter where this Section is inserted is Chapter XV titled as “Building Regulations”. There are elaborate provisions under the headings “Notice regarding Erection etc. of Building”, “Commencement of Work”, “Lawfully erected structures infringing rules or by-laws”, “Dangerous Structures” and finally “Works unlawfully carried on”. Therefore, the issuance of a stop-work notice is premised on satisfaction of the Designated Officer that the erection of any building or the execution of any such work, as is described in

Section 254, has been unlawfully commenced or is being unlawfully carried on upon any premises that he can, by written notice, require the person directing or carrying on such erection or execution to stop the same forthwith. Sub-section (2) of Section 267 enables implementation and enforcement of the stop-work notice by even obtaining police assistance. By sub-section (3), cost of any measure taken under sub-section (2) shall be paid by the person who is the recipient of the stop-work notice.

20. Far from the satisfaction demanded by sub-section (1) what the impugned notice recites is that there is a breach of the terms stated to be of an agreement dated 22nd December, 1995 and the Memorandum of Understanding dated 7th April, 2017. It is not the case of the K.D.M.C. that the works have been unlawfully commenced or that they have been unlawfully carried on. Had that been the position, there was no justification for not only issuing the commencement certificate, but granting part completion certificate in respect of certain buildings which constitute the whole project. Those certain buildings comprising of the project are already constructed and in regard thereto, even completion certificates have been granted. Thus, this was a composite development and portions or parts thereof have been executed. The works are the part of a project and if that has

already been implemented, then, we see no reason or justification for issuing the stop-work notice. Pertinently, the development permission has not been cancelled. In pursuance of the development permission/commencement certificate, various works have been executed already at the site. Now commencement of further work is underway and that is but to complete the whole project. The project is conceived in public interest and for satisfying the larger public purpose. We do not see how the K.D.M.C. can blame another statutory body namely, the A.P.M.C. and stop the work. It is not as if the K.D.M.C. is remediless. If there is an agreement styled as a development agreement or there is a Memorandum of Understanding of 7th April, 2017 pursuant to which the K.D.M.C. claims that it has discharged its obligation but the A.P.M.C. has not fully discharged its obligation, then, nothing prevented the K.D.M.C. from instituting the appropriate legal proceedings against the A.P.M.C. The A.P.M.C. is capable of being sued and it can be sued in terms of the Maharashtra Agricultural Produce Marketing (Development and Regulation) Act, 1963. To our mind, therefore, the K.D.M.C. was not justified in issuing the stop-work notice. If it notices the breach of the conditions of the contract and if the contract is valid, subsisting and binding on both the K.D.M.C. and

the A.P.M.C., the K.D.M.C. can take recourse to the legal proceedings. It was not justified in issuing the stop-work notice.

21. Once we reach the above conclusion then we do not deal with the other argument of Mr.Bodake that the stop-work notice has not been issued by the Designated Officer but by the Assistant Director of Town Planning attached to K.D.M.C. Although that argument would have to be dealt with, but once we find that there is no justification on merits for issuance of the stop-work notice, then, we have no alternative but to quash it.

22. We, accordingly, allow the writ petition by quashing and setting aside the stop-work notice. We direct that the work shall be carried on strictly in accordance with the terms and conditions of the commencement certificate. However, this order and direction shall not prevent the K.D.M.C. from initiating or instituting such legal proceedings as are permissible in law to seek implementation and enforcement of the agreement dated 22nd December, 1995 and the Memorandum of Understanding dated 7th April, 2017. All contentions in regard thereto are kept open. We clarify that we have not expressed any opinion insofar as the contentions of the K.D.M.C. and A.P.M.C. in relation to these arguments. Once the stop-work notice is quashed and set

aside, the letter dated 15th March, 2018 issued by the Assistant Director of Town Planing of K.D.M.C. will also not survive.

23. Rule is made therefore absolute in terms of prayer clause (b) (i) and (ii). There will be no order as to costs.

(S.C.DHARMADHIKARI, J.)

(G.S.PATEL, J.)