

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

**WRIT PETITION NO.5489 OF 2015
WITH
CIVIL APPLICATION NO.2258 OF 2016
WITH
CIVIL APPLICATION NO.2357 OF 2017**

Nitin M. Raut ... **Petitioner**
Vs
Vasai-Virar City Municipal
Corporation and Ors. ... **Respondents**

**WITH
WRIT PETITION NO.7632 OF 2016**

Shantaram Daji Vartak ... **Petitioner**
Vs
State of Maharashtra and Ors. ... **Respondents**

Ms.Seema Chopda and Mr.T.R.Yadav for
the Petitioner in WP/5489/15.

Mr.S.R.Nargolkar I/b Mr.Swapnil S.
Mohite for the petitioner in WP/7632/16
and for respondents in WP/5489/15.

Mr.Atul G.Damale, Senior Counsel I/b
Ms.Swati H.Sagvekar for Respondent
Nos.1 and 2 in WP/5489/15.

Ms.Ashwini A. Purav, AGP for State.

Mr.Akshay J. Kandarkar I/b Mr.Rajesh S.
Datar for respondent Nos.11 and 12 in
WP/5489/15.

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

DATE :- JULY 4, 2019

P.C. :-

1. Writ Petition No.5489 of 2015 is filed in this Court to seek the following reliefs :-

(a) This Hon'ble Court may be pleased to issue a Writ of Mandamus and/or writ in the nature of Mandamus or any other Writ, order or direction, thereby directing the Respondent Nos.1 to 4 and more particularly Respondent Nos.1 & 2 Vasai-Virar City Municipal Corporation and the Municipal Commissioner to initiate action of demolition of illegal construction carried out on the lands bearing Survey Nos.112, 113 & 114 situated at Village-Virar, Taluka Vasai, Dist-Palghar;

(b) This Hon'ble Court may be pleased to issue a Writ of Mandamus and/or writ in the nature of Mandamus or any other Writ, order or direction, thereby directing the Respondent Nos.1 to 4 and more particularly Respondent Nos.1 & 2 Vasai-Virar City Municipal Corporation and the Municipal Commissioner to construct D.P. road on the lands bearing Survey Nos.112, 113 and 114 situated at village Virar, Taluka-Vasai, Dist-Palghar.”

2. The petitioner has highlighted in this writ petition that the petitioner and his family own and possess lands bearing Survey Nos.93, Hissa No.9B, Survey No.110 Hissa No.2/2, Survey No.111 Hissa No.2/2,3,4, Survey No.128 Hissa No.19 situate within the limits of the Vasai-Virar Municipal Corporation.

3. The City and Industrial Development Corporation of Maharashtra (“CIDCO”, for short) was appointed as special town planning authority for this area. It published Interim Draft Development Plan on 10th September, 1992. Then, on 7th

September, 1995, there was a first Draft Development Plan. The Planning Authority modified the Draft Development Plan on 31st August, 1998. Then followed the second Draft Development Plan of 19th January, 2000. The third and final Development Plan was dated 26th May, 2003 and final sanctioned plan by the State Government dated 9th February, 2007. In this plan, the lands bearing Survey Nos.112(part), 113(part) and 114(part) are reserved for 20 meters wide Development Plan road. Respondent Nos.5 and 16 constructed multi storied buildings on the lands reserved for the Development Plan road and this was done in the year 2008-2012. The construction is without permission of the Municipal Corporation. The father of the petitioner-Mr.M.G. Raut submitted a representation on 6th May, 2008 before the Principal Secretary, Department of Urban Development and brought to his notice the illegal constructions on these lands/survey numbers. The request was to take effective measures against these construction activities.

4. The petitioner says that information was obtained under the Right to Information Act, 2005 and the father of the petitioner then approached the Commissioner and brought to his notice the factum of these construction activities and to such an enormous extent.

5. Thereafter on account of ill-health, the father of the petitioner could not pursue this request and that is how the petitioner stepped in. The petitioner says categorically that the family of the petitioner has already surrendered land admeasuring 3500 sq. meters or thereabout for development of this road. However, the construction, on Survey Nos.112 to 114, which are reserved plots, is the reason for the road not being laid and constructed. The petitioner being interested in having the full Development Plan Road in terms of the reservation, corresponded with the Municipal Corporation and requested the Corporation to take steps to have these structures demolished. Once the request made by him and including to carry out a proper survey did not result in the desired action being initiated, alleging that the Corporation and other officials are protecting these constructions, the petitioner has approached this Court.

6. We need not refer to each and every letter or complaint. The gravamen of the petitioner's charge and allegation is that firstly, the CIDCO as a Planning Authority was duty bound to take the reservation to its conclusion. Secondly, as a Planning Authority it should not have turned a blind eye to the construction activity. A paper reservation on the plan can never suffice for a reservation like a road has to be taken to its logical

end by the Municipal Corporation and none other. As a Planning Authority, it is duty bound to provide this amenity to the public. It is that obligation which is highlighted in this petition so as to claim the relief.

7. We must also refer to the additional affidavit that the petitioner has filed. The petitioner has submitted before this Court that the private respondents, who are arraigned as such by him, are not the sole title holders. There are as many as 36 land holders whose names are officially recorded in the revenue record or 7/12th extract of the said land. These respondents do not have a authority or power on behalf of all the land owners. Similarly, he has brought to the notice of this Court the factum that some of the properties are jointly held. There has been no partition nor has there been any document produced denoting that the shares are demarcated and held by specific individuals. It is, therefore, clear that several affidavits may have been filed, but we are only concerned with the stand of the Municipal Corporation. In its affidavit, we have not seen a contra stand. In fact, the Municipal Corporation does not dispute the allegations and the averments in the petition and position that in the Development Plan, there is a reservation. This stand of the Municipal Corporation makes our task simple. There is no contest and the Planning Authority must

be allowed to take the notices issued to the wrongdoers to its logical, legal conclusion. The writ petition is disposed of with this expectation that the Municipal Corporation will act accordingly. The civil applications also stand disposed of.

8. Interestingly, we have a Writ Petition No.7632 of 2016 and that is stated to be filed by Shantaram Daji Vartak.

9. We do not enter the controversy as to whether he is related to Mr.Nitin M.Raut (Petitioner in Writ Petition No.5489/15), but in his petition, he has indeed impleaded Mr.Nitin M. Raut as a party respondent. Curiously, this petition challenges the inaction on the part of respondent No.2 in this writ petition. Respondent No.2 to this writ petition is the District Collector, Revenue District of Palghar. He says that the petitioner and his family are the owners of lands bearing Survey No.112 Hissa No.3, 4 and 5/3/2, Survey No.113(part), Survey No.114 Hissa No.5 and Survey No.115 Hissa No.3. situate at Virar, Taluka Vasai, Dist.Palghar. An application was made on 28th June, 2016 seeking to convert these lands and use them for non-agricultural purpose. However, for that to happen, the Collector or his delegate must make an order in accordance with law.

10. Thereafter respondent No.4 - Municipal Corporation is sought to be directed to issue No-objection Certificate for non-

agricultural use of the subject lands.

11. The entire foundation, therefore, is that these lands presently cannot be used for non-agricultural purpose. However, they are indeed used.

12. We are spared from making any reference and further to the facts and pleadings in this petition because Mr.Nargolkar, learned advocate appearing in support of this petition fairly states, on instructions, that this petitioner has constructed building Nos.15, 16, 18 and 19. This petitioner has, indeed, conferred the development rights in respect of building Nos.15, 16, 18 and 19. These have been constructed and now it is apparent that without any order converting the user of the land from agricultural to non-agricultural issued by the Collector and in the absence of the No-objection certificate from the Municipal Corporation. These are, therefore, the buildings, which cannot stand and ought to be removed.

13. These are indeed constructed on the portions of the land reserved for the Development Plan road.

14. We do not think that the petitioner in this writ petition can, unless he proves to the satisfaction of the competent Civil Court that he has terminated all arrangements in relation to these

development rights, that the development was carried out without his knowledge and approval, that consequences of the development found to be illegal and unauthorised should entirely be visited on the developer, succeed in obtaining any reliefs in terms of these prayers.

15. After having conceded that these permissions have not been granted, the petitioner must suffer the consequences of dismissal. It is possible in such circumstances for somebody else to urge, who was in law obliged to obtain these permissions and approvals, that he has proceeded on a statutory presumption that if the application is made, but if no decision has been taken thereon either way and communicated within the period specified in the statute, then, the permissions are deemed to have been granted. Presently, the petitioner before us has not contended anything in terms of these presumptions or deemed sanction. We do not, therefore, have to express any opinion on this aspect of the matter. We leave that issue open for consideration when raised in appropriate proceedings before an appropriate forum.

16. Writ Petition No.7632 of 2016, however, is disposed of by accepting the statement of the petitioner's advocate that this petitioner is willing to offer a rehabilitation or alternate package to the occupants of the building Nos.15, 16, 18 and 19, but it is

conditional and it is entirely for the occupants to accept it and all consequences of either refusal to accept or its acceptance as provided in law shall follow.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)