

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7499 OF 2013
WITH
CIVIL APPLICATION NO.2881 OF 2017

Shri Gabrel Simav Andrat and Ors. ... Petitioners

Vs

City and Industrial Development
Corporation (Maharashtra) Ltd. and Ors. ... Respondents

Mr.Nilesh Kamble I/b Umesh R.
Mankapure for the Petitioners.

Mr.G.K.S. Hegde for Respondent Nos.1
and 2.

Mrs.Ashwini A. Purav, AGP for State-
Respondent No.3.

Mr.Sandeep V.Mahadik for Respondent
Nos.4 and 5.

Ms.Swati Sagvekar for Respondent No.6.

CORAM :- S. C. DHARMADHIKARI &
M.S.KARNIK, JJ.

DATE :- MAY 02, 2019

P.C. :-

1. The petitioners are aggrieved and dissatisfied with a notice which was issued on 14th June, 2013 by the City and Industrial Development Corporation of Maharashtra (for short, "the CIDCO").

2. When the petition was filed impugning such a notice, on hearing both sides, this Court made an ad-interim order on 28th November, 2013. That order reads as under :-

“1. Learned counsel appearing for the Petitioner invited our attention to the affidavit of Ms.Vaishali Patil, Additional Tahsildar, Vasai in Writ Petition No.10221 of 2011. He submits that considering the statements made in paragraph 3 of the said affidavit, the structure in question cannot be said to be unauthorized.

2. Issue notice to the Respondents returnable on 22 January 2014. Learned AGP waives service for Respondent no.3. In addition to service through the Court, the advocate for the Petitioner to serve private notice to Respondent nos.1,2,4 and 5. If affidavit of service is not filed one week before the returnable date, the petition will stand dismissed without further reference to the Court.

3. Till the next date, there will be an ad-interim relief in terms of prayer clause (c).”

3. Today a Civil Application is placed together with the writ petition and the prayer is to seek an amendment to the writ petition.

4. The subsequent development is that the Vasai-Virar Municipal Corporation has been established and it is a successor in interest of the CIDCO. It is pursuing the action initiated by the CIDCO and has issued a notice dated 6th November, 2017 as a Planning Authority alleging that the construction carried out on Survey No.35/2 by one Samson Asis Andrads is unauthorised and illegal. That construction has not been removed.

5. We are of the firm opinion that if the petitioners before this Court, including the said Samson Asis Andradis are stating on oath that they are protected tenants and have constructed the farm houses for better cultivation of land prior to 1980 and that is why these structures cannot be said to be unauthorized and illegal and no steps could have been taken against them, they must appear before the competent authority and convince it that the petitioners are indeed carrying on above activities. That they have erected the structures for facilitating the agricultural operations and to carry them out in a smooth and efficient manner. Let them produce all the documents which would denote that the municipal authorities could not have issued notice by invoking Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966. Now, when the petitioners are accepting that the Vasai Virar Municipal Corporation is indeed a competent authority, then, this writ petition need not be kept pending.

6. We grant liberty to the petitioners to file reply to the impugned notice issued by the Vasai Virar Municipal Corporation dated 6th November, 2017. The reply shall be filed by all the petitioners within a period of two months from today. In the event, the reply is not filed within two months, the right to file the same shall stand forfeited. The Vasai Virar Municipal

Corporation on receipt of the reply and after duly considering it, shall pass appropriate orders in accordance with law. Those orders be passed within a further period of two months. We clarify that we have not expressed any opinion on the rival contentions.

7. The ad-interim order passed by this Court shall continue for eight weeks so as to enable the petitioners to file the reply. Needless to clarify that since the notice is traceable to Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966, it will be open to the petitioners to invoke and if permissible, subsection (3) of that provision as well. All contentions in relation thereto are kept open.

8. The writ petition is disposed of as such.

9. In view of the disposal of the writ petition, all connected applications stand disposed of accordingly.

(M.S.KARNIK, J.)

(S.C.DHARMADHIKARI, J.)