

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11247 OF 2014

1. **LA'BUILDE ASSOCIATES,**
a registered partnership firm, having
its office at Kuber Bhuvan, Bajaj Road,
Vile Parle (West), Mumbai 400 056
2. **BHAGVANJI RAIYANI,**
the Managing Partner of Petitioner
No. 1, residing at 501, Deepak Villa,
15, Vallabhnagar, 4th Road, JVPD
Scheme Vile Parle (W), Mumbai 400
056

... **PETITIONERS**

~ VERSUS ~

1. **CITY & INDUSTRIAL
DEVELOPMENT CORPORATION
OF MAHARASHTRA LIMITED,**
through its Managing Director,
CIDCO, "Nirmal", 2nd Floor,
Nariman Point, Mumbai 400 021
2. **THE STATE OF MAHARASHTRA,**
through its Principal Secretary,
Department of Urban Development,
Government of Maharashtra,
Mantralaya, Mumbai 400 032.
3. **VASAI-VIRAR CITY MUNICIPAL
CORPORATION,**
through its Commissioner, Bazar
Ward, Virar (East), Tal. Vasai, Dist.
Thane 401 303

... **RESPONDENTS**

APPEARANCES

FOR THE PETITIONER **Mr Bhagvanji Raiyani (in person).**
FOR RESPONDENT NO. 1 **Mr Lokesh, i/b Gopal Krishna**
 Shivaram Hegde.
FOR RESPONDENT NO. 2 **Mrs Ashwini A Purav, Asstt.**
 Government Pleader.
FOR RESPONDENT NO. 3 **Ms Swati Sagavekar.**

CORAM : S.C. Dharmadhikari &
G.S. Patel, JJ.

JUDGMENT RESERVED ON : 11th September 2019

JUDGMENT PRONOUNCED ON : 27th September 2019

JUDGMENT (Per GS Patel, J):

1. This Writ Petition under Article 226 of the Constitution of India seeks to issue a Writ of Mandamus for the following reliefs:

“(a) To direct Respondent No. 1 to issue the O.C. of Classic Wing Bldg. B and final Occupancy Certificate of Petitioners’ captioned Bldg. A & B of Vile La’BuilDe Housing Complex as required u.s. 2.15.4 of the Vasai-Virar Development Control Regulations.

(b) To direct Respondent No. 1 to refund the Security deposit with 6% accrued interest to the Petitioners as required u.s. 2.15.5 of the Vasai-Virar Development Control Regulations.

(c) To direct the 1st Respondent to withdraw the demand letter dated 13-7-2009 to Ex. N asking the Petitioners to pay Rs.26500 as Fire cess and Rs.1,35,0990 as penalty for purported unauthorised occupation of wing Classic of Bldg.B or the Hon'ble Court may quash the same and direct the Respondent No. 1 to issue the Occupation Certificate of the said Classic Wing without any further delay.

(d) To direct the 3rd Respondent to withdraw the demand letter dated 20-4-2012 at Ex. W asking the Petitioners to pay totalling to Rs.17,85,187 for purported unauthorised occupation of wing Classic of Bldg. B or the Hon'ble Court may quash the same and direct the Respondent No. 1 to issue the Occupation Certificate of the said Classic Wing without any further delay.

(e) To direct Respondent No. 3 to issue the occupation Certificate of Classic Wing of Bldg.B of Vile La'BuilDe Complex, Village Gokhivare, at Vasai."

2. The 1st Petitioner is a partnership firm of suppliers and builders. It closed its business in mid-2007. Petitioner no. 2 is the managing partner of the 1st Petitioner. Although the 1st Petitioner has ceased doing business, the firm is not yet dissolved. Respondent No. 1 is the City and Industrial Development Corporation of Maharashtra Limited ("**CIDCO**"), an enterprise established and wholly controlled by the 2nd Respondent, the State of Maharashtra. The 3rd Respondent is the Vasai-Virar City Municipal Corporation ("**VVCMC**").

3. The 2nd Petitioner, Mr. Raiyani, appears in person. We have heard him as also Mrs Swati Sagvekar for Respondent No. 3 and

Mrs Purav for Respondent No. 2. We have carefully considered the Petition with its annexures, the Affidavit in Reply filed by the 3rd Respondent VVMC and the written submissions tendered by Mr Raiyani.

4. The Petition relates to a development of plot bearing Survey No. 105(pt) and 106(pt) in Phadkal Street, Village Gokhivare, Taluka Vasai, District Thane.

5. The facts of the matter run like this. Between 1988 and 1990, the planning authority for the Vasai Virar Sub Region, within the meaning of the Maharashtra Regional and Town Planning Act (“**MRTP Act**”), was the Mumbai Metropolitan Region Development Authority (“**MMRDA**”). On 14th May 1990, the 1st Respondent, CIDCO, came to be appointed as a Special Planning Authority for the Vasai Virar Sub Region. In 1992, CIDCO prepared a Draft Development Plan for Vasai Virar Sub Region. This was finalised in 1995. It was then submitted in 1998 to the State Government for final approval. That approval was accorded in February 2007. The 3rd Respondent, VVCMC, was formed in 2009. It took over charge as the Planning Authority in July 2010.

6. The development on these plots (Survey No. 105 (pt) and 106 (pt)) consists of two building of two wings each. This is a layout which was approved at the instance of the original developer, one RK Wadhwan. Petitioner No.1 appears to be a sub-developer. The approved plans were for two buildings called Type ‘A’ and Type ‘B’ (we will ignore the names given to these buildings to avoid

confusion). The Type 'A' building has two wings, Wing 'A' and Wing 'B', of stilts and seven floors, with 56 flats. The Type 'B' building also had two wings, 'A' and 'B', is of stilts and seven floors, and also has 56 flats.

7. The Affidavit in Reply filed by the 3rd Respondent, the VVCMC, indicates that there is an Occupation Certificate granted on 24th August 2004 for the Type 'A' building (both wings). As far as the Type 'B' building is concerned, there is a part Occupation Certificate dated 6th March 2007 issued only respect of Wing 'B' of the Type 'B' building. The Petitioners have since applied for an Occupation Certificate of the remaining Wing 'A' of the Type 'B' building. In response CIDCO raised certain requisitions. It did so by its letter dated 13th July 2009 when it was still the Special Planning Authority for the Vasai-Virar Sub-Region. After the VVCMC took over as the Planning Authority of the Sub-Region in July 2010, the Petitioners made an application on 16th March 2012 for the grant of the remaining Occupation Certificate.

8. The first difficulty, according to the VVCMC, is that the entire project continues to stand in the name of the original developer R. K. Wadhwan and at no point has the name of the 1st Petitioner been entered on record. It is also asserted that the Petitioners' application does not comply with Section 44 of the MRTP Act and, hence, no letter was issued under Section 45 of that Act. The 3rd Respondent has only replied to the Petitioner and requested him to comply with the requisitions stated in the letter. Before we turn to the actual requisitions (as set out in the Affidavit in Reply), we must note Section 44 of the MRTP Act:

“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, 1967.

(2) Without prejudice to the provisions of sub-section (1) or any other provisions of this Act, any person intending to execute and 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 as Integrated Township Project by notification in the Official Gazette or reject the application.”

9. The first requisition is in regard to an environmental clearance required from the Maharashtra Pollution Control Board (“MPCB”). On 4th January 2017, the MPCB issued a stop work notice in respect of this project, a copy of which is at Exhibit “D” to

the Affidavit from pages 114 to 116. There is an earlier show-cause notice of 8th November 2016 from pages 117 to 119. Both notices are addressed to Wadhwan. These notices are issued invoking Section 33A of the Water (Prevention and Control of Pollution) Act 1974 and Section 31A of the Air (Prevention and Control of Pollution) Act 1981 respectively. These communications seem to emanate from an application made by a journalist, one Pratik Thakur on 24th August 2016, following which there were reports by the Sub-Regional Officer on 11th November 2016. Exhibit "D" of 4th January 2017 (the date is incorrectly typed on page 114) refers to the previous documents of October to December 2016. It mentions that the MPCB consent has not been obtained and that the necessary water and air pollution control devices were not installed. The communication at Exhibit "D" records that the Board Officer visited the construction site on 25th October 2016 to investigate and noted that the construction activity had started without MPCB consent or environmental clearance. Construction of about 10 lakhs sq. mtrs of built-up area had been completed and occupancy had been allowed without permission, but at the same time there was no sewage treatment plant and untreated waste water was being discharged into the nearby nalla leading to the creek. There was no municipal solid waste treatment facility to treat solid wastes, and unsegregated solid waste was being disposed of in haphazard manner in the vicinity. No environmental measures like rainwater harvesting or solar energy had been installed. Wadhwan's representative was unable to produce documents regarding planning permissions from the local body, present air statement, FSI and non-FSI areas, solid waste disposal plan during construction, waste water treatment facilities, municipal solid waste treatments etc. It

was then said that there was no compliance and that since construction had continued without obtaining consent, therefore, the MPCB had issued a stop work notice. Annexed to this letter is the previous communication of 8th November 2016 which details the documents required from Wadhwan, which were never produced. These are listed as follows:

“**AND WHEREAS**, your representative have failed to produce the following documents during the course of site inspection;

- 1) Details of Planning Permission obtained from Local Body with Plans approval viz. Initial plan approval and its successive amendments including area statements.
- 2) Details of No Development Zone (NDZ), if any, shown in plan along with reservations like CRZ or any other.
- 3) Present area statement of the project indicating area of plot, FSI area, Non-FSI are, total BUA and RG area etc.
- 4) Copy of Environmental Clearance & CRZ clearance obtained.
- 5) Solid waste (Debris) disposal plan approved from concerned Urban Local Body & Compliance thereof.
- 6) A copy of permissions under NA & Minor mineral excavation (गौण खनिज उत्खनन) obtained from the office of the District Collector.
- 7) Details of waste water treatment facility for existing and proposed construction.
- 8) Details of Municipal Solid waste Collection, treatment & disposal facility.”

10. This was a show cause notice and Wadhwan was asked to show cause as to:

- “a) Why your construction activities shall not be directed to close down hence forthwith?
- b) Why the appropriate authority shall not be directed to disconnect electricity/water supply of your project?”

11. But these are not the only requisitions mentioned in the Affidavit in Reply. Paragraph 9 has four sub paragraphs (a) to (d) and they read thus:

“9. Environmental clearance should be required stop work is given as per MPCB order.

a. **Point No. 3** — Fire Charges — This Respondent has levied Fire Capitation Fees of Rs. 1,20,000/- in continuation to the letter dated 13/07.2009 issued by the Respondent No. 1 and also as per Resolution dated 15/02/2011 passed by General body of this Respondent Corporation, which states that a building with a height of 20 to 25 meters which is either under construction or fully constructed but Occupancy Certificate not received shall be entitled to pay Rs. 30/- per square meter or minimum Rs. 1,20,000/-. Hence this Charges are levied. Hereto annexed and marked as **“Exhibit-B”** is the copy of the Resolution dated 15/02.2011.

b. **Point No. 4** — Water Charges — This Respondent has received Water source Charges of Rs. 4,55,000/- (which comprise of charges for 1 BHK – Rs. 15,000/- and 2 BHK – Rs. 20,000/-) out of which Rs. 1,40,000/- has already been paid by the Petitioner and balance of Rs. 3,15,000/- is yet to be recovered from the Petitioner. This charges are levied as

per Resolution dated 07/06/2011 passed by General Body of this Respondent Corporation. Hereto annexed and marked as **“Exhibit -C”** is the copy of the Resolution dated 07/06/2011.

c. **Point No. 5** — Unauthorised Occupancy Charges — This Respondent has levied an amount of Rs. 250 per square meters (built up area 1340.35 sq. mtrs X 250 = 3,35,090/-) which needs to be paid by the Petitioner for allowing the flat purchasers to occupy the A Wing of B Type Building without procuring Occupancy Certificate.

d. **Point No. 6** — Replenishing Security Deposit — This Respondent has forfeited the Security Deposit for the unauthorised occupation without Occupancy Certificate of A Wing of B Type Building as per the provisions of Development Control Regulation of Vasai Virar Sub Region which provides for forfeiture of security deposit in case of breach of any condition, provisions and regulation stipulated in the Commencement Certificate and it shall be absolute discretion of the Competent Authority.”

12. There is no rejoinder, and there is also no challenge to the VVCMC resolutions referred to in these paragraphs. There is no denial of the facts stated, either, and, in particular, no denial that A Wing of B Type building was allowed to be occupied without a prior occupancy certificate.

13. What emerges from this Affidavit in Reply is that contrary to the assertions in the Petition there are several hurdles in the Petitioners' way. The first is that there does not seem to have been a formal change of name of developer from Wadhwan to Petitioner No.1. This is not an idle formality. If the Petitioners seek, as they do,

a grant of an occupation certificate and other such reliefs, they must be able to show that they are entitled to these in their name. We are not concerned with the generalised allegations made in the Petition about of shortage of staff or manpower in the PWD department or a lack of provision of drinking water. Equally, we are not concerned with the allegations made in the Petition about the nature of hearings that the Petitioners may have attended. In our Writ jurisdiction we have only to see whether the Petitioners able to make out a case justifying our intervention. If the Petitioners seek a positive relief, as they do in prayer clauses (a) to (e), then the Petitioners must be able to demonstrate, first, a legal entitlement to such relief; and, second, that there is no compliance yet due from the Petitioners. In paragraph 35, after a quite extraordinarily discursive narrative covering several unnecessary issues, the Petitioners say that the CIDCO's policy in levying a fire cess is arbitrary, unjust and unreasonable; that the water supply issue should be streamlined across the State. This is not something we can examine in this writ petition. The Petition appears to us to be unclear about whether it is raising a wider question as might be permissible in a public interest litigation. If this is in fact so, then the matter cannot be listed before us because it is not our roster or assignment. Mr Raiyani is clear that he is not arguing the present matter as a public interest litigation. If that be so, then we are not concerned with any larger or broader issue.

14. It is no answer to a requirement of compliance with a municipal or statutory norms to say that it was not demanded while issuing a previous certificate. Indeed this is a very risky argument to venture, because it would lead a Court to order the cancellation of

the previous occupation certificate rather than the grant of a fresh one.

15. The written submissions from the 2nd Petitioner raise several distinct points. As regards paragraphs 3 to 5 of these written submissions, the fact that the plinth of an entire building was not earlier checked or that lifts were not inspected or in regard to portable water have no bearing on the specific requisitions set out in the Affidavit in Reply. The Petitioners rely on a document at Exhibit “O” at page 61. That document is dated 25th June 2007 and is from CIDCO but this will not assist the Petitioners because it is clearly in respect of one wing of one of the two buildings. This does not mean that each wing does not need independent certification.

16. In paragraph 6 of the written submissions that are allegations made against the previously serving Managing Director of CIDCO. We decline to go into these questions. This is not our remit under Article 226. If allegations of mala fides are being made, they must be particularised.

17. Then reference is invited to a notice under Section 80 of the Code of Civil Procedure 1908 (“CPC”) at Exhibit “T”, but that again does not mean that the Petitioner has been able to establish any legal entitlement to the relief sought.

18. Then it is argued that CIDCO’s insistence that the plinth of the building for which the occupation certificate sought was to be completed in one year of the earlier commencement certificate is

arbitrary because this was not previously insisted upon. The submission need only be stated to be rejected.

19. We cannot in exercise of our jurisdiction under Article 226 of the Constitution of India direct an authority to act contrary to law. This is also the case in regard to fire cess mentioned in paragraph 9 of the written submission, where the Petitioners say that this demand was waived. We can issue no Mandamus directing such a waiver. We are not concerned with the generalised allegations in paragraphs 10, 11 and 12.

20. The Petitioners insist that the building has been fully completed and had been so certified by their Architect and therefore they should now be issued an unconditional occupation certificate. We are unable to accept this submission.

21. We are particularly dismayed by the wording of paragraph 17 (vi) where the Petitioners say that their Affidavit in Reply are annexed some “irrelevant exhibits” and that “*these are in Marathi which the Petitioner No.2 in person or his partners do not understand.*” We will not countenance any such argument about the official language of this State from any litigant before us. If the Petitioners are unable to understand Marathi then it is high time they took steps to do so. We also cannot fathom how they can conclude that the exhibits are ‘irrelevant’ if they cannot understand them. We are aware that the 2nd Petitioner has filed many public interest litigations in this Court, in some of which he may have succeeded but that does not give the 2nd Petitioner or any commercial firm

with which he is associated in any capacity to make statements of this kind regarding the official language of the State.

22. It does not also give the Petitioners the license to come to Court seeking that their private commercial interest be protected by this Court without insisting on compliance with statutory and regulatory conditions and norms. The 2nd Petitioner himself has been known to file public interest litigations against non compliant constructions in this city, and to insist on strict compliance. We fail to understand how when it comes to his own project he can seek a waiver of even one condition.

23. Throughout the petition, no ground is made out demonstrating a legal entitlement. The only allegation is that some previous permissions and certificates are given, and therefore there should be no insistence on compliance with current norms, nor levy or penalties or charges. The basis of this submission seems to be some form of estoppel by conduct against CIDCO and VVCMC. There can be no estoppel against a statute. What is being sought is a mandamus ordering a waiver from compliance with the law.

24. We find no merit in the Petition. It is dismissed. No costs.

(S. C. DHARMADHIKARI, J.)

(G.S. PATEL, J.)