

22.8.2019

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13475 OF 2018

Suresh Gianchand Kumar Petitioner

V/s.

CIDCO, Naina & Ors. Respondents

Mr. Abhinav Chandrachud a/w. Mr. G.T. Mestha,
Advocate for the petitioner.

Mr. Ashutosh M. Kulkarni, Advocate for respondent
no.1.

Mr. Vijay D. Patil a/w. Mr. Vivek V.Salunke,
Advocate for respondents no.2 to 4.

Mr. Atul Vanarse, AGP for State.

CORAM : B.P. DHARMADHIKARI, &

SANDEEP K. SHINDE, JJ.

Thursday, 22nd August, 2019.

P.C. :

1. Heard respective Counsel.
2. Respondent no.1-Planning Authority has still not drawn even a draft development plan for Village-Vihighar, Taluka-Panvel, District-Raigad which forms part of development of Navi Mumbai International Airport.
3. Contention of petitioner is, the petitioner has a prior valid agreement of purchase in relation to suit land and in breach thereof, owner has transferred the property to respondent no.4. Respondent no.4 has raised a residential structure upon it.
4. Exercising powers under Section 53 of the Maharashtra Regional Town Planning Act, 1965 ("MRTP

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Act" for short), respondent no.1 has issued a notice for its removal. It has given period of thirty two days and during that period, no request for regularisation invoking Section 44 has been moved. Submission is, notice under Section 53 therefore needs to be implemented.

5. Learned Counsel appearing for respondent no.4 states that, respondent no.4 has got a valid sale-deed in his favour and is in possession. He applied to Planning Authority, namely Gram Panchayat and Gram Panchayat has permitted construction. According to him, in this situation, request has also been made to respondent no.1- Planning Authority but it has been turned down on the ground that respondent no.1 is still not having any Town Planning Scheme for the Village.

6. Without prejudice, it is submitted that,

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petitioner also has constructed his structure on the strength of permission of Gram Panchayat only.

7. It is pointed out that, petitioner initially filed a suit for injunction to restrain respondent no.4 from proceeding further with construction and already temporary injunction has been declined. Thereafter, a suit for specific performance and for recovery of possession has also been filed and both the suits are still pending.

8. Counsel appearing for respondent no.1- CIDCO (NAINA) submits that, as respondent no.1 does not have any scheme as such, action either to find out disputed construction and/or any further steps could not be taken.

9. The learned Counsel for the petitioner, submits that as structure being raised is unauthorised, independent of title dispute, the

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issue can be gone into in writ jurisdiction. According to him in terms of Section 53(5) as no further steps for securing regularisation have been taken in notice to be implemented.

10. Section 52 and Section 53 of MRTTP Act show, that if construction undertaken is contrary to development plan notice, action under Section 53 could be taken. Here, it appears that, as yet respondent no.1 has not finalised any such Town Planning Scheme.

11. The other question before this Court, is whether construction raised can be said to be illegal ie. in breach of some provisions and therefore it cannot be regularised. For the present, there is no such plea by the petitioner.

12. We therefore find that, when suit seeking injunction or suit for specific performance is

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already pending, the Writ Petition of the present nature cannot be entertained. Keeping all rival contentions open, we dispose of the petition. No order as to costs.

(SANDEEP K. SHINDE, J.)

(B.P. DHARMADHIKARI, J.)