

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION (L) NO. 401 OF 2019
WITH
WRIT PETITION (L) NO. 400 OF 2019**

Pushpa Manohar Dawane	}	Petitioner
versus		
Municipal Corporation of	}	
Greater Mumbai and Anr.	}	Respondents

Mr.Anil V.Anturkar-Senior Advocate with
Mr.Chandrakant N. Chavan and Mr.Savin
J. T. for the petitioner.

Ms.Vandana Mahadik for the
respondents.

Mr.Rohan Nipurte-Assistant Engineer
(B&F) R/North Ward present.

Mr.Ganesh Seth-Sub Engineer present.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATE :- MARCH 13, 2019

P.C. :-

1. Leave is sought to amend the writ petition to add petitioner no. 2 (M/s.Neeta Travels), which is a partnership concern and petitioner no. 1 has entered into an agreement allowing petitioner no. 2 (M/s.Neeta Travels), the added petitioner, to park the vehicles/buses belonging to the said Travels. The writ petition is allowed to be amended by adding the said Neeta Travels as petitioner no. 2. The consequential amendment be carried out thereafter in the body of the petition.

2. By this writ petition (WPL/401/2019), the petitioners claims the following relief:-

“(a) that this Hon’ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, thereby directing Respondents to forthwith with draw and/or cancel the impugned notice dated 1.2.2019 No.RN/DOIRN/002/54/MRTP Act RN 40NO1 29/01/2019.”

3. Insofar as the other petition is concerned (WPL/400/2019), even though this relief is claimed, on instructions, it is stated that the petitioners have removed what the respondent-Municipal Corporation terms as a structure or unauthorised development. Once the structure has been removed and which is in the nature of a cabin, but portable, on instructions, the counsel submits that the petitioners would not erect any such cabin or carry out any development activity, even permissible within the law. If such activity requires prior permission from the authorities, they will erect such facility or any temporary structure, only after compliance with the rules. That petition, therefore, works itself out.

4. Mr.Anrutkar, on instructions, says that in the event the petitioner is desirous of putting up a temporary cabin or resting on the land, a water tank only for facilitating the drawal of water for washing vehicles or for other purposes, he would make a written application and in the event that application is made, we

direct that within two weeks from the date of its receipt, the requisite orders be passed thereon strictly in accordance with law.

5. In view of the above Writ Petition (L) No.400 of 2019 is allowed to be withdrawn and disposed of.

6. In the other petition being Writ Petition (L) No.401 of 2019, the controversy is that petitioner no.1 before this court is an individual. She says that she is a citizen of India and residing at the address mentioned in the cause title. The two respondents before this court are respectively the Municipal Corporation of Greater Mumbai and the Designated Officer/Assistant Engineer, R-North Ward.

7. The petitioner no. 1 says that she purchased the property, more particularly described in para 2 of the petition. She claims to be the owner of the property. The petitioners made an application to the Sub-Divisional Officer, Mumbai Suburban District and requested permission for land filling. The application was accompanied by necessary fees/payment of royalty. Thereafter, the permission came to be granted and the permission dates back to last about 16 years and more. She has pointed out that there is some complaint and leading to an inspection carried

out by the authorised officer in the month of June, 2016. There is no mangrove or natural vegetation. Thereafter, the petitioners narrate the activities of other individuals, who, they claim, were bent on harassing petitioner no.1. She refers to the legal proceedings instituted against them and thereafter, the petitioners refer to a policy of the Government, by which, the Additional Commissioner of Police (Traffic), on 12th September, 2017, declared that no private buses and heavy vehicles shall be parked anywhere except privately owned spaces. The petitioners state that they are in the business of plying buses and therefore, the buses are parked on this property. The buses belonging to petitioner no. 2 alone are parked, according to the petitioners. No outsiders are allowed to park buses nor it is a parking lot for public and declared to be such by the Municipal Corporation. Yet, the respondents have objected to the use by the petitioners and when the petition was filed, they were threatening to remove the buses and with the assistance of police. Then, when this matter was mentioned, it was stated that any time the police officials would visit the site and prohibit the petitioners from parking the vehicles. Once that actually happened, we allowed this petition to be taken up out of turn. It was argued before us yesterday and even today.

8. The only contention of Mr.Anrurkar learned senior counsel appearing for the petitioners is that the Maharashtra Regional and Town Planning Act,1969 (MRTP Act) has been enacted with the object of regulating development. It is, therefore, to make a plan which will outline the development and use of lands in the region and for setting up appropriate authorities and boards therefor, to make better provisions for preparation of development plans and to provide for creation of new town and for all such purposes that the said Act has been enacted. Mr.Anrutkar submits that section 2(7) defines the term “development” and the activity that the petitioners have indulged in or are carrying on, by no stretch of imagination, would come within the purview of this definition. The petitioners are neither carrying out construction of buildings, engineering, mining or other operations in or over or under land or making any material change, in any building or land or in the use of any building or land or doing any material or structural change in any heritage building or its precinct. Though the petitioners state that they have reclaimed the land, by itself, that activity is not covered by this expression. None of such activities have been carried out. The activity of the petitioners is to simplicitor park the vehicles. The reclamation of the land has been done with prior permission of the Sub-Divisional Officer and by payment of requisite fees.

Once the land has been already reclaimed and is lying in that state for all these years, then, the mere intervention of the Development Control Regulations for Greater Mumbai, 2034 (DCR, 2034) or the CRZ Notification or modification of the earlier CRZ Notification of 2011 will not alter the position and particularly in law. Hence, barging into the property with police officials and prohibiting the parkings of buses on a private property, is a totally high handed action. It is also undue harassment and arbitrariness on the part of the respondents. The petitioners cannot be deprived of their constitutional rights in this manner.

9. On this petition, we have heard extensively Mr.Anturkar and then we called upon the advocate appearing for the respondents to address us. On the earlier occasion and even today, our attention is invited to the DCRs by Ms.Mahadik. She would submit that the DCR, 2034 in Regulation 34(3.7) defines the words “natural areas”. It is an environmentally sensitive zone where the development, with the approval of the competent authority, may be permissible. She then invited our attention to a notification issued by the Ministry of Environment and Forest and Climate Change, Government of India dated 18th January, 2019 to urge that the classification of CRZ includes classification

as CRZ-IB and clause 2.1.2 of this notification deals with the same. She would submit that the intertidal zone i.e. the area between Low Tide Line and High Tide Line shall constitute CRZ-IB. The land reclamation may be the permissible activity, but for that, permission has to be granted. There is no such permission. Therefore, coupled with Regulation 68 and Regulation 34(3.7) so also this CRZ Notification, the Municipal Corporation was fully justified in issuing the subject letter/notice. She would submit that the petitioners may rely upon a notification/order of the Additional Commissioner of Police (Traffic), but that is not relevant and germane. What is relevant and germane is the nature of the activity and carried out in a natural area. She, therefore, submits that section 54 of the MRTP Act has been rightly invoked and the whole emphasis is to discontinue the unauthorised development on the land and as set out in the Schedule. The unauthorised use of land for parking of buses is after a development which is carried out and that development is unauthorised.

10. To appreciate the above contentions and for the limited purpose of the petitioners' activities which they say are confined to only parking of vehicles, we have carefully perused not only the notice, but the legal provisions. As far as the legal provision that

is invoked, it is falling within the domain of the planning authority and in terms of the applicable provisions of the Act (Chapter IV titled as "Control of Development and Use of Land Included in Development Plans"). Now section 43 thereof places restriction on development of land and it is stated that insofar as the permission contemplated that is for institution or changing the use of any land or carrying out any development of land without permission in writing of the Planning Authority. However, the activity that is carried out, according to the petitioners, is not development and the restriction would not apply. It is clear from a perusal of section 43 that for our purpose we need not go into this controversy for it may be that the reclamation of land would amount to development as defined in section 2(7) of the MRTP Act, but there is no denial of the factual position that for such reclamation and leveling of land or filling it and bringing it to a state where vehicles can be parked, that has already been done by the petitioners and in terms of the permission obtained from the Sub-Divisional Officer (Office of the Collector, Mumbai Suburban District) way back in December, 2002. The petitioners, therefore, state that the permission for this activity has not been obtained under the MRTP Act cannot be a ground for prohibiting even parking of vehicles. There is no construction activity, in that sense. This issue also need not be

bothering us for the simple reason that section 54, which is invoked, deals with stopping of unauthorised development. That is referable to development of land as indicated in sub-section (1) of section 52, which is being carried out but has not been completed and the Planning Authority may serve notice on the owner and person carrying on development requiring the development to be discontinued and thereupon the provisions of sub-sections (3), (4), (5) and (6) of section 53 shall come into play. Thus, this is a power to stop unauthorised development which is being carried out, but not completed. The consequences of carrying out such development or continuing the activity of development after notice would invite the consequences in terms of sub-section (2) of section 54. The reason for this is obvious that somebody, who is carrying on development, but has not completed that activity and has been served with a notice in terms of section 54, he can then invoke sub sections (3) to (6) of section 53. These sub-sections *inter alia* permit retention of the activity or continuation of the same and when that request is made, the activity may not be brought to a halt or a complete stoppage. In these circumstances, if such is the notice issued and this is the provision which is invoked, then, we fail to understand as to how the petitioners can be proceeded against at all. The petitioners say that this is a private property. The petitioners say

that land was reclaimed with full knowledge and permission from the Sub-Divisional Officer, Collectorate of Mumbai Suburban District. The petitioners say in categorical terms that private buses cannot be parked on public roads or on either side simply because they block the traffic or such parking result in traffic jam. Huge line of parked buses on the road is witnessed by us all. In the event a private land has to be arranged for parking and the petitioners say that except for their own buses, such parking is not allowed nor are the parking slot sold to general public, then, which is the activity the petitioners are indulging in has not been clarified to us. If the description of unauthorised development together with the particulars of land as found in the Schedule, is carefully perused, what we find is that the Schedule to the notice says “unauthorised use of land for parking of buses”. Now this is termed as development, but this is not an activity which is commenced, but has not been completed. This is at best a continuing act. Therefore, apart from section 54 not being the applicable provision, we find that even the CRZ Notification will not come to the aid and assistance of the respondents in this case. That may seek to regulate the development in CRZ. That may also permit limited activities in a natural area. That may also protect and safeguard Eco Sensitive Zone, but what we can find is that the notification relied upon regulates permissible activities in CRZ-IB

areas. Land reclamation is permitted for the activities enlisted in the sub-clauses of clause 5.1.2. In these circumstances, what we find is that the subject act is not prohibited as understood in law. There is nothing brought on record by which we could presume that there is a destruction of natural area or tampering with its state unauthorisedly. We need not go into the larger issue or question because, in the peculiar facts, the activities as understood, are mere parking of vehicles, namely, buses belonging to petitioner no. 2 on a private property. That the land or private property is a natural area is of no consequence for what is being carried on is parking of buses. That parking of buses minus the erection of the facility such as a cabin for watchman or staff or water tank is not brought within the purview of the notice, but it is claimed to be an unauthorised use of land for parking of buses. If that is how the use of land is termed as development, then, that use has also commenced much prior to the notice and it is traceable only to section 54.

11. For these reasons, we hold that the petitioner has not carried out any activity and which is stated to be covered by section 54, as invoked in this case. Though this notice is issued under section 54, the argument is that this section refers to sub-section (1) of section 52. Section 52(1), *inter alia*, deals with

commencement, undertaking or carrying out development activities or instituting or changing the use of any land. If the land was a natural area, then, its use will change, according to the respondents by parking of buses. We do not see how by mere parking of buses belonging to the petitioners on their own land, which is a natural area, by itself and without anything more would attract the consequences as set out in sections 52 and 54 of the Act. More so, when we have taken care of the other activities styled as development and that we have not allowed unless there is a permission or approval for the same. In these circumstances, mere bringing of vehicles for the purpose of parking would not, in this case, affect the natural state of the land nor the protection of the zone which is styled as Eco-Sensitive. If the activities of development are regulated and only some of them are held to be permissible, including reclamation of land, then, that activity was already carried out and prior to the notification or the DCR 2034 coming into force. In these circumstances, now that cannot be made the subject matter of the notice and the notice merely referring to the change of use which is unauthorised, once the land is reclaimed with permission of the Sub-Divisional Officer, we do not think that we can sustain the act of the respondents.

12. Accordingly, we direct that the petitioners shall not be prohibited or prevented from parking the buses belonging to petitioner no. 2 and that the parking of buses by itself will not enable the authorities to resort to the provisions, particularly section 54 of the MRTP Act. The activities can be continued by the petitioner provided the petitioners comply with other laws.

13. The writ petition is disposed of in these terms. There would be no order as to costs.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)