

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (L) NO.10307 OF 2019

Mohd. Anwar Mohd. Amin Ansari ... Petitioner

Versus

Bhiwandi Nizampur City Municipal Corporation & Ors. ... Respondents

Mr.R.D. Suryawanshi for the Petitioner.

Mr.N.R.Bubna for Respondent Nos. 1 and 2.

Mr.Momin Mohammad Farooque Nisar for Respondent No. 5.

Mr.Mohd. Arshad Mohd. Aslam Ansari – Respondent No. 5 present in person.

CORAM : S.J.KATHAWALLA, &
B.P.COLABAWALLA, JJ.

DATE : 13TH JANUARY, 2020

P.C. :

1. Earlier Mr.Bilal Salahuddin Shaikh had filed Writ Petition No. 13979 of 2017 before this Court seeking demolition of illegal and unauthorized construction carried out by Mr.Mohd. Anwar Mohd. Athar and Mr.Mohd. Anzar Mohd. Athar, who were Respondent Nos. 3 and 4 on plot of land bearing No. 1345/1 and 1442 situated in front of Sagar Plaza Hotel, Nagaon, Bhiwandi. Respondent Nos. 3 and 4 therein accepted that the said construction was illegal and informed the Court that they have applied for grant of building permission / regularization. They also gave written undertaking to this Court stating that they shall not proceed with the construction till the decision of the Bhiwandi Nizampur City Municipal Corporation (Corporation) and in case of rejection of regularization proposal, they shall remove

the unauthorized construction carried out by them till the date of the passing of the order. The said undertakings were accepted by this Court. The operative part of the Order dated 23rd February, 2018 passed in Writ Petition No. 13979 of 2017 is reproduced hereunder :

“i) The undertaking of the Respondents Nos.3 and 4 are marked as U-1 and U-2 respectively for identification. The undertakings contained in paragraphs 2 and 4 are accepted;

ii) In view of the undertakings as above, we direct the Respondent No.1 to decide the application dated 29th January 2018 as expeditiously as possible and in any event within a period of 60 days from the date on which the application is submitted. The decision taken on the said application shall be communicated to the Architect of the Respondent Nos.3 and 4, who has submitted the application;

iii) Till the date of communication of the decision on the application for regularization, action of demolition shall not be taken in respect of the subject structure by the Respondent No.1. If application for regularization is rejected, the action of demolition shall not be taken by the Municipal Corporation for a period of 6 weeks from the date of communication to their Architect to enable the Respondent Nos.3 and 4 to comply with their undertakings;

iv) We make it clear that on the failure of the Respondent Nos.3 and 4 to comply with the undertakings, the Respondent Nos.1 and 2 shall take action of demolition of the structures subject matter of the petition without issuing any further notice to the

Respondent Nos.3 and 4;

v) We make it clear that we had made no adjudication on merits of the application for regularization made by the Respondent Nos.3 and 4, which shall be decided in accordance with law;

vi) We direct the Petitioner to serve an authenticated copy of this order in the office of the Respondent Nos.1 and 2 within a period of 10 days from the date on which this order is uploaded;

vi) The petition is disposed of on the above terms.”

2. Admittedly, the regularization application filed by Respondent Nos. 3 and 4 has been rejected by the Corporation on 20th August, 2018. However, Respondent Nos. 3 and 4 have failed and neglected to demolish the said illegal and unauthorized construction as undertaken. Respondent Nos. 3 and 4 have neither challenged the order rejecting regularization nor demolished the illegal and unauthorized construction as undertaken to this Court.

3. The Petitioner – Mohd. Anwar Mohd. Amin Ansari who was the original occupant of Room No. 5, 1st Floor, Athar Seth Building, Municipal House No. 1442, Salamatpura, Near Noor Masjid, Nagaon, Bhiwandi, Dist. Thane, has now filed Writ Petition (L) No. 10307 of 2019 stating that the Agreement dated 2nd February, 2016 was executed by and between the Petitioner, Respondent No. 4 and Respondent No. 5, who is Corporator and is also carrying on business as Builder and Developer. As per the said Agreement, Respondent No.5 undertook to redevelop the said Athar Seth Building. In the Agreement dated 2nd February, 2016, Respondent No.5 agreed to

give one residential flat to the Petitioner being Flat No. 201, 2nd Floor, admeasuring about 700 sq.ft. of carpet area as permanent alternate accommodation to the Petitioner. According to the Petitioner, Respondent No. 5 has failed and neglected to provide him the said alternate accommodation as promised. He has therefore filed the above Writ Petition inter alia seeking the following reliefs :

“(a) This Court be pleased to issue a Writ of Mandamus, orders, directions or any other appropriate Writ in that nature, directing Respondent Nos. 1 and 2 to comply with the directions contained in the Order dated 23rd February, 2018 passed by this Court in Writ Petition No. 13979 of 2017.

(b) This Court be pleased to issue appropriate directions to Respondent Nos. 1 and 2 forthwith demolish illegal and unauthorized construction carried out by Respondent Nos. 3 to 5 on the land bearing Survey No. 62 (part) and 63 (part) i.e. Municipal House No. 1345/1 and 1442, lying being and situate in front of Sagar Plaza Hotel, Nagaon, Bhiwandi.

(c) This Court be pleased to issue appropriate directions in the nature of Writ of Mandamus or any other appropriate Writ in that nature, directing Respondent No. 1 to initiate action of disqualification of Respondent No. 5 being Councilor under Section 10(1)(D) of Maharashtra Municipal Corporations Act, 1949 for carrying out illegal and unauthorized constructions with Respondent Nos. 3 and 4.

(d) This Court be pleased to issue a Writ of Mandamus, orders, directions or any other appropriate Writ in that nature, directing Respondent No. 1 to initiate necessary action under Section

56(A) of the Maharashtra Regional and Town Planning Act, 1966 against Respondent No. 2 for neglecting and overlooking the said unauthorized construction.

(e) This Court be pleased to issue necessary action of contempt against Respondent Nos. 1 and 2 for willfully disobeying the Order dated 23rd February, 2018 passed by this Court in Writ Petition No. 13979 of 2017 and punish them in accordance with the Contempt of Court Act”.

4. Respondent No. 5 is present in Court along with his Advocate. He admits that he had executed the Agreement dated 2nd February, 2016 with the Petitioner and Respondent No. 4 pursuant to a Development Agreement dated 7th December, 2015 executed between him and the Respondent No.4. However, he states that on 15th November, 2016, Respondent No. 4 through his Advocate's notice terminated the development agreement. He further states that he has not carried out any construction pursuant to the Development Agreement dated 7th December, 2015 and before he could carry out construction, Respondent No. 4 had terminated the Development Agreement dated 7th December, 2015. He therefore states that since he has accepted the termination of the agreement dated 7th December, 2015, he has no right, title and interest in the said construction carried out by Respondent No. 4.

5. Since the regularization application is rejected on 20th August, 2018 and Respondent Nos. 3 and 4 have failed and neglected to remove the unauthorized construction as undertaken, the Corporation is directed to demolish the unauthorized

construction carried out by Respondent Nos. 3 and 4. As far as other reliefs in the present Writ Petition are concerned, the Petitioner shall be at liberty to seek the same in appropriate proceedings from an appropriate Court.

6. At this stage, the learned Advocate appearing for the Corporation informs us that **one of the occupants** has filed a Regular Civil Suit No. 276 of 2019 before the Civil Judge, Junior Division, Bhiwandi against the Corporation and the Court had asked the Corporation to maintain status quo. If that be so, the Civil Judge, Junior Division, Bhiwandi, shall dispose of the said Interim Application on merits within a period of 30 days from today. In the event of the said Court vacating the ad-interim order passed in the said RCS Suit, the Corporation shall forthwith take action as per law, for which adequate police protection shall be provided.

7. A copy of the Order shall be placed before the Civil Judge, Junior Division, Bhiwandi on 20th January, 2020 at 11.00 a.m. and necessary directions shall be obtained.

8. The Writ Petition is accordingly disposed off.

(B.P.COLABAWALLA, J.)

(S.J.KATHAWALLA, J.)