

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10873 OF 2018

Mrs. Asha Surinder Kumar Mittal
Vs.
City Industrial and Development
Corporation Ltd.

.... Petitioner

.... Respondents

Mr. A.V. Anturkar, Senior Advocate i/by
Mr. Chaitanya Bhandarkar for the Petitioner.
Mr. Gopal K.S. Hegde with Ms Pinky Bhansali
for the Respondents.

CORAM: S.C. DHARMADHIKARI &
R.I. CHAGLA, JJ.

DATE : FEBRUARY 03, 2020

P.C:

1. This petition under Article 226 of the Constitution of India was placed today for admission at the request of the respondents. The respondents mentioned this petition because the counsel appearing for the respondents had orally made a statement, when the petition was first listed before a Division Bench of this Court on 25-9-2018, that the respondents will not act in furtherance of the impugned notice.

2. The impugned notice invokes Section 54(1) of the Maharashtra Regional and Town Planning Act, 1966 (**“the MRTP Act”**).

3. The petition was taken up today, by consent, and we have heard Mr. Anturkar, learned Senior Counsel appearing for the petitioner and Mr. Gopal Hegde, appearing for the respondents. We have also perused the petition and the annexures thereto as also the affidavit in reply of the respondents.

4. The petitioner says that, she is the owner of a ground plus one storey structure admeasuring 500 sq.mtrs. on plot bearing survey No.17, hissa No.9, plot bearing survey No.19, hissa No.12 having an area of about 11.7 gunthas equivalent to 1174 sq.mtrs., and a ground structure admeasuring approximately 650 sq.mtrs. on plot bearing survey No.18, hissa No.4 having an area of about 1320 sq.mtrs. at Juhu Village, Juhu Nagar, Vashi, Navi Mumbai, Thane.

5. The impugned notice is dated 24-9-2018.

6. The petitioner says that, one Yeshwant Rama Bhagat and others were the original inhabitants of Juhu Village and the owners of plot bearing survey No.17, hissa No.9 and survey No.19, hissa No.12. That was allotted to the original owners in lieu of acquisition of their property within the limits of the Planning Authority's jurisdiction.

7. It is stated that the original owners had sold the

property to one Purshottam Tibrewala and two others. That was by a registered Sale Deed dated 25-5-1990. It is said that when the plot was acquired by Tibrewala and others, there were structures on the land and tax was being paid to the Gram Panchayat and thereafter to the Navi Mumbai Municipal Corporation.

8. Thereafter, there is an Agreement for Sale-cum-Assignment dated 1-9-2006 between Tibrewala and others and the petitioner. It is stated that there is an irrevocable Power of Attorney executed. It is claimed that the petitioner had taken consent of the persons from whom Tibrewala and others acquired the property. It is claimed that the Agreement for Sale dated 22-5-2006 resulted in an acquisition of another plot of land bearing survey No.18, hissa No.4.

9. We are not concerned with that presently because the petitioner claims that when she entered into an Agreement for Sale-cum Assignment, the ground plus one storey structure admeasuring 500 sq.mtrs. was already in existence on the said land bearing survey No.17, hissa No.9, survey No.19, hissa No.12. When the petitioner purchased the plot bearing survey No.18, hissa No.4, the ground structure admeasuring 650 sq.mtrs. was already existing on the said plot. The petitioner has neither changed nor altered the nature of the structure. The

petitioner claims that she has not carried out any unauthorised development nor is she in the process of carrying out any unauthorised development.

10. It is in these circumstances that the petitioner assailed the notice, copy of which is at Exhibit "A" to the petition.

11. The notice, which is impugned in the petition, is at page 21 of the paper-book (Exhibit-E). It is addressed to Purshottam Tibrewala Mittal.

12. That says that Tibrewala has made unauthorised construction on survey/gat Nos.18/22/19 to the extent of 1174.00 sq.mtrs.. The notice says that he is in the process of making this construction. The notice, therefore, invokes Section 54(1) of the MRTP Act.

13. The present petition was filed in this Court on 25-9-2018 and in that an affidavit has been filed by the respondents. After explaining as to how the respondents are the Planning Authority, they say that there is a site inspection and during the course of that it was observed that in survey Nos.18/22/19 of Village Juhu, Plot No.3, Sector-11, Juhugaon, Vashi, an unauthorised construction of ground plus one floor admeasuring 1174.00 sq.mtrs. was constructed. The plot is

reserved for allotment to Project Affected Persons. The petitioner was called upon to demolish this unauthorised construction. It is claimed that the unauthorised construction is nothing but an encroachment on this plot by the petitioner.

14. It is claimed that there is another notice dated 6-11-2012 which was challenged by the petitioner by filing Civil Suit No.55 of 2012 before the Civil Judge, Senior Division, Thane. An application for interim injunction was made in that Suit which came to be dismissed on 3-11-2012. That order was challenged by filing Miscellaneous Civil Appeal No.171 of 2012 and the District Judge has dismissed that Appeal on 24-1-2014. A review was also filed which was dismissed.

15. It is claimed that the petitioner has not obtained any permission from the Corporation for construction of the notice-structure and that is required to be demolished. Further, the land below the notice-structure is acquired by the Government. The lands acquired for development of Navi Mumbai City are vested in the respondents and the said lands are now public lands. For all these reasons, it is submitted that the petition be dismissed.

16. The only contention of Mr. Anturkar, learned Senior Counsel appearing for the petitioner, is that the impugned notice is dated 24-9-2018, copy of which is at page 21 of the

paper-book. There was an earlier notice, copy of which is dated 6-1-2012 and a reply was given on 10-1-2012 in which the position has already been clarified. The position at site is that, the construction was already carried out. Mr. Anturkar would submit that Section 54 could not have been invoked by the respondents to deal with a completed act. This is not a case of a structure under construction. The structure was already constructed and existed at site and together therewith the land beneath was purchased by the petitioner. For all these reasons, Section 54 was not the applicable section and if at all any provision could have been invoked, then, Section 53 of the MRTP Act was the available power. The respondents do not invoke that power deliberately and intentionally so as to defeat the opportunity that is available to the petitioner to make an application for regularisation. On this ground alone, he would submit that the notice be set aside.

17. With the assistance of both counsel, we have perused the petition and the annexures thereto. The argument of Mr. Hegde is that the petition has no substance and must be dismissed.

18. The writ petition itself says that, the petitioner acquired survey No.17, hissa No.9 and survey No.19, hissa No.12 having an area of about 11.7 gunthas equivalent to 1174

sq.mtrs. The said Yeshwant Rama Bhagat and others were stated to be the original owners. It is claimed that the Government purported to acquire this land belonging to the said Bhagat by invoking the Land Acquisition Act, 1894. However, the physical possession of the land was never taken. That is how the original owners continued to remain in unobstructed and peaceful possession of the lands. Now, it is evident and in para 6 of the petition it is stated that the said Yeshwant Rama Bhagat and others were the owners of the land. Thereafter, on 25-5-1990, the said Bhagat executed a Sale Deed in favour of Purshottam Tibrewala and two others in respect of these lands.

19. It is stated that at that time there were certain structures on the land in respect of which house tax was being paid to the Gram Panchayat until the year 1992 and thereafter to the Navi Mumbai Municipal Corporation.

20. Then in para 10 of the petition, a reference is made to the deal/transaction between Tibrewala and others and the petitioner.

21. Pertinently, copies of neither Deeds nor other documents have been annexed to the petition. It is claimed that the petitioner, as a *bona fide* builder and developer, obtained necessary consent from the original owners and paid the consideration to Purshottam Tibrewala and others. It is claimed

that there were transactions in relation to survey No.18 as well.

22. The petitioner says that when she entered into an Agreement for Sale-cum-Assignment, which is of 2006, a ground plus one storey structure admeasuring 500 sq.mtrs. was already in existence on the land bearing survey No.17, hissa No.9 and survey No.19, hissa No.12. On the other hand, the plot bearing survey No.18, hissa No.4 had a ground floor structure admeasuring 650 sq.mtrs. These are the existing structures.

23. However, when the initial notice was given to Purshottam Tibrewala, copy of which is at Exhibit "A" to the petition, that alleges that survey/gat Nos.18/22 - plot Nos.3 to 11 of Juhugaon are the lands in question. On these lands, Tibrewala has commenced construction of 1174.00 sq.mtrs. The construction is of RCC and ground plus one storey.

24 Now, one Asha Developers replies to this notice vide its reply at page 17 (Exhibit-B) of the paper-book. It is stated that the notice is addressed to Purshottam Tibrewala Mittal. That was received by M/s. Asha Developers on 10-1-2012. That is in respect of survey/gat Nos.18/22. The notice served invokes Section 54(1) of the MRTP Act and the said Purshottam Tibrewala Mittal was called upon to stop the unauthorised development by way of RCC construction ground

plus one.

25. It is claimed that the land and the structures built thereon are owned by M/s. Asha Developers and not by Purshottam Tibrewala Mittal. Therefore, the notice is being replied on behalf of M/s. Asha Developers. It is claimed that there is no construction going on at the above plot of any nature whatsoever. The ground plus one structure is already in existence since 1990. However, in para 2 of this reply it is stated that the noticee undertakes not to take up any further construction till prior permission from concerned authority. Then it is said that the constructed structure of ground plus one bearing survey No.17, hissa No.9 and survey No.19, hissa No.12 totally admeasuring 11.7 gunthas was owned by Yeshwant Rama Bhagat. The same history which is set out in the memo of the petition is set out, save and except with the modification that since the year 2006 M/s. Asha Developers are the lawful owners/occupiers of the said land with structures built thereon. The present petitioner is Mrs. Asha Surinder Kumar Mittal. She is stated to be the proprietress of M/s. Asha Developers. Pertinently, the construction activity was stated to have been commenced by Purshottam Tibrewala Mittal. The petitioner is claiming to be the title holder since 2006. However, in the memo of the writ petition it is not said that the petitioner is carrying on business in the name and style of M/s. Asha

Developers and that is how the said Purshottam Tibrewala Mittal sold the property to her. In fact, in relation to survey No.18, hissa No.4, the petitioner says that there was an Agreement for Sale dated 22-5-2006 executed between the original owners Smt. Indirabai Ramchandra Patil and two others and the petitioner. Thus, the petitioner claims to have acquired the property but there is no reference to any transaction with M/s. Asha Developers. Pertinently, Asha Developers is the sister concern of VRM, Engineers, Contractors, Builders. The notice that is impugned in the present petition is issued to Purshottam Tibrewala Mittal. That is in relation to survey No.18. Now, it is not the case of the petitioner that on survey No.18 the construction activity referred therein is already carried out. In fact, in para 13, as far as survey No.18, hissa No.4 is concerned, it is stated that, that was taken over by an Agreement for Sale dated 17-10-2007. In that regard, reference can be made to para 14 of the petition where the petitioner says that ground plus one storey structure admeasuring 500 sq.mtrs. was already in existence on the land bearing survey No.17, hissa No.9 and survey No.19, hissa No.12. When the petitioner purchased the plot bearing survey No.18, hissa No.4, the ground floor structure admeasuring approximately 650 sq.mtrs. was already existing on the plot. The petitioner says that she neither changed nor altered the nature of the structure nor carried out any unauthorised development. Pertinently, the

petitioner, in the petition, does not say as to how she is in any way connected or related to Purshottam Tibrewala Mittal. The notice is addressed to him. The notice is not replied by him. On both occasions, the petitioner proposed to challenge this notice.

26. At the request of the petitioner we are not obliged to examine as to whether this notice can be sustained for it refers to a completed act and not an ongoing construction activity.

27. We are clear in our mind that the notice refers to survey/gat Nos.18/22/19. The petitioner says that the survey numbers are not these but survey No.17, survey No.18 and survey No.19. The construction is stated to be on survey Nos.18/22/19. It is in these circumstances that we do not think that we should be examining any contentions, particularly as canvassed by Mr. Anturkar.

28. In any event, we find that the respondents have filed an affidavit which in para 10 says that legal proceedings were initiated to save the structure from demolition but even that attempt has failed.

29. To our mind, the petitioner cannot derive any benefit for the simple reason that the principle is well settled. A person who is carrying out an unauthorised construction cannot be heard to say that, when the said person, at his own instance or

at the instance of any other person commences, undertakes or carries out development or institutes, or changes the use of land without permission required under the MRTP Act, or which is not in accordance with any permission granted or in contravention of any condition subject to which such permission has been granted, after the permission for development has been duly revoked, or in contravention of any permission which has been duly modified and which act is a punishable offence, can call upon the Court to consider that the applicable provision is not Section 54 but Section 53 of the MRTP Act.

30. It is evident from a reading of Section 53 that it confers power to require removal of unauthorised development and Section 54 deals with power to stop unauthorised development. Both concern the unauthorised development and merely because the notice mentions Section 54, does not mean that the respondents are powerless in dealing with and causing removal of the unauthorised development. In fact, sub-section (1) of Section 54 refers to sub-section (1) of Section 52. It then says that, where any development of land as indicated in Section 52(1) is being carried out but has not been completed, the Planning Authority may serve on the owner and the person carrying out the development a notice requiring the development of land to be discontinued. Now, the notice that was first addressed to Purshottam Tibrewala Mittal on 6-1-2012

refers to the construction of ground plus one. The notice which has been sent on 24-9-2018 refers to the construction made by Purshottam Tibrewala Mittal and it also says that the noticee is carrying on construction but that is incomplete. To our mind, when the reference in the notice is to an incomplete act and the petitioner not being the recipient of the notice, she can hardly be heard to say that this notice is not valid in law. In fact, we find that the provision invoked enables the petitioner to seek retention of the construction/development at site. The same provisions, as are available in connection with a notice under Section 53(1), applies even in relation to a notice invoking sub-section (1) of Section 54 of the MRTP Act. Mr. Purshottam Tibrewala Mittal could have invoked these provisions and sought retention of the structure.

31. However, when the affidavit in reply clearly says that it is the petitioner who attempted to challenge the notice by filing a Civil Suit and failed to obtain protective interim relief therein, then, all the more we are not inclined to accept the argument of Mr. Anturkar.

32. We find that there is no merit in the petition. It is dismissed. There will be no order as to costs.

(R.I. CHAGLA, J.)

(S.C. DHARMADHIKARI, J.)