

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 4155 OF 2018
WITH
INTERIM APPLICATION NO.3467 OF 2020**

Kapil Mahendra Sharma	}	Petitioner
Versus		
Commissioner, Thane	}	
Municipal Corporation and Ors.	}	Respondents

Mr.Atul Damle-Senior Advocate i/b. Mr.Amol P. Mhatre for the petitioner.

Mr.Mandar Limaye for the Municipal Corporation.

Mr.P.P.Kakade-Government Pleader with
Ms.R.A.Salunkhe-AGP for State.

Mr.Sunil Patil-Executive Engineer present.

**CORAM :- DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.**

DATE :- FEBRUARY 18, 2021

PC :-

1. The principal relief claimed in this writ petition is for a direction on the Thane Municipal Corporation to allot vacant, peaceful and legal possession of final plot no. 44, admeasuring 813.78 square meters (hereafter "the said plot") in favour of the petitioner, free from all encumbrances.

2. Mr.Limaye, learned advocate for the Municipal Corporation does not dispute the entitlement of the petitioner to have an allotment in respect of the said plot. However, it is submitted by him that the said plot is not free from encumbrances. There are at least 17 unauthorized structures and an unauthorized temple on such plot and that the Municipal Corporation proposes to issue a public notice and thereafter, take the proceedings to its logical conclusion for removal of all such encroachments.

3. Reacting to a query of the Court, Mr.Limaye, on instructions of Mr.Sunil Patil, the Executive Engineer of the Municipal Corporation, who is present in Court, submits that earnest endeavour would be made to allot the said plot in favour of the petitioner within a year from date of issuance of such public notice.

4. Mr.Damle, learned senior advocate for the petitioner submits that since he has been awaiting allotment of the said plot since 1995, he would be satisfied if the aforesaid assurance given on behalf of the Municipal Corporation by Mr.Limaye is honoured and allotment is made within a year of issuance of the public notice.

5. Mr.Damle also makes a grievance with regard to a 'nullah' that is being excavated in the vicinity of the said plot and makes a prayer for a direction to the Municipal Corporation to decide the representation made by the petitioner seeking change of alignment of such nullah.

6. Mr.Limaye does not seriously oppose the prayer and submits that such representation shall be duly considered in accordance with law.

7. In view of the aforesaid submissions, we dispose of this writ petition with the following order:

- (i) The statement of Mr.Limaye that earnest endeavour would be made to remove the encroachments on the said plot and that allotment thereof would be made in favour of the petitioner within a year of issuance of the public notice is accepted;
- (ii) The public notice may be issued within two weeks from date;
- (iii) Once the encroachments are removed, the Municipal Corporation shall not waste any further time to issue the letter of allotment in favour of the petitioner; and
- (iv) The representation made by the petitioner seeking change of alignment of the nullah shall be considered by the same Executive Engineer of the Municipal Corporation upon granting opportunity of hearing to the petitioner and such representation shall be disposed of by a reasoned order within eight weeks from date.

8. There shall be no order as to costs.

9. In view of the aforesaid order, the interim application stands disposed of.

Jayant V.
Salunke

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Jayant V. Salunke
Date: 2021.02.18
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(G. S. KULKARNI, J.)

(CHIEF JUSTICE)