

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7706 OF 2021**

Mahesh Avachar Gala & Anr ...Petitioners
Versus
The State of Maharashtra & Ors ...Respondents

Mr SG Deshmukh, i/b Abhijeet Kandarkar, for the Petitioners.
Mr Asif I Patel, Additional GP, with RP Kadam, AGP, for the
Respondents-State.
Mr Akshay P Shinde, for Respondent No. 5- MMRDA.

**CORAM: G.S. Patel &
Madhav J. Jamdar, JJ.**
DATED: 23rd November 2021

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1. Heard.
2. Rule. Respondents waive service. By consent, Rule is made returnable forthwith and the matter is taken up for hearing and final disposal.
3. The short challenge in this Petition is to an order or direction dated 1st September 2021 issued by the MMRDA, the 5th Respondent.

4. The Petitioner is developing a residential and commercial building on Survey No. 251, Hissa No. 3 (Part), 4 (Part), Survey No. 252, Hissa No. 2(Part) and Survey No. 261, Hissa No. 1(Part) of village Kon, Taluka Bhiwandi. It seems that the MMRDA received several complaints from Jagruti Dinesh Prajapati, Rakesh Kaluram Mhatre, Advocate Hanumant Manek Jadhav, Manoj Ramji Prajapati and a letter from the Tahashildar, Bhiwandi along with a letter from Shri Manoj Ramji Prajapati in regard to the lands in question. All these complainants requested MMRDA to revoke the commencement certificate dated 10th May 2021 issued to the Petitioner. They alleged that there were issues in regard to the 7/12 extracts and the measurement plan certified by the Taluka Inspector of Land Records. In its impugned communication, MMRDA's deputy planner said there may be issues of ownership and the land and estates, and the legal cell of MMRDA was requested on 29th July 2021 to vet the complaints and give their opinion. That opinion had not been received as of 1st September 2021.

5. On 17th August 2021, Manoj Ramji Prajapati (the 6th Respondent) made a demand to MMRDA to strictly comply with the next renewal of the Metro no objection certificate issued by the Metro Implementation Unit of MMRDA. The MMRDA received a letter from the Tahsildar, Bhiwandi dated 17th August 2021 and another letter from Manoj Prajapati dated 13th July 2021 addressed to the Hon'ble Revenue Minister raising issues about the TILR's map and the ownership of the lands.

6. By the impugned letter, the Collector, Thane was requested to provide clarity about ownership as was the District

Superintendent of Land Records. He was asked to provide clarity regarding boundaries, possession and authenticity.

7. In paragraph 5 of the impugned letter, the Petitioner's architect and owner were directed to submit a clarification. No time limit was prescribed within which the Petitioner and his architect were to do so but instead MMRDA directed the Petitioners — without a hearing and without awaiting an explanation — to stop all work on site until further directions.

8. Mr Prajapati is in Court and says it his land that has been encroached. That may be so, and he certainly has his right to take legal recourse and to initiate civil proceedings in such manner as he may be advised. But we do not see how a public authority can initiate peremptory action of stopping work like this without minimal opportunity to the party affected to make an effective representation. In fact, the Petitioner has been denied all opportunity to make any representation whatsoever. No time was given to the Petitioner to render an explanation although one was called for. Instead it was told to forthwith stop work. That could have been possibly done only if the MMRDA had formed a prima facie view that the complaints had merit and were justified. The mere filing of complaints without anything more could not have resulted in an across-the-board stop-work order. If it is to be contended that the stop-work order was issued because MMRDA was satisfied about the veracity of the complaints, then the order is immediately vulnerable because it was passed without any opportunity being given to the Petitioners to present their case, to meet the complaints, to render an explanation and to be heard.

Thus, from either perspective, the impugned communication does not withstand judicial scrutiny.

9. Therefore, the impugned order to the extent of the directions to stop work in clause 5 cannot be sustained. We do not interfere with the rest of the impugned communication calling for information. MMRDA may proceed to ask for explanation but the direction to stop work is quashed and set aside.

10. It is made clear that the Petitioner will continue work at its own risk as to costs and consequences and will not be entitled to claim any equities as a result of this order.

11. The Petitioner will make a representation to the MMRDA by 6th December 2021 and MMRDA will hear the Petitioner as also the complainant, 6th Respondent and other affected parties/complainants on 8th December 2021 at 11.00 am. MMRDA will then pass a reasoned order no later than by 15th December 2021.

12. We make it clear we have not expressed any view on the merits of the rival contentions especially as to ownership and map boundaries. All contentions are left open.

13. Rule is made absolute in these terms. There will be no order as to costs.

14. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J.)

(G. S. Patel, J)