

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7499 OF 2021

Paresh Vaya .. Petitioner
Versus
Municipal Corporation of Greater
Mumbai and anr .. Respondents

WITH
WRIT PETITION NO.7505 OF 2021
WITH
WRIT PETITION NO. 7498 OF 2021

Manoharlal Singhanian .. Petitioner
Versus
Municipal Corporation of Greater
Mumbai and anr .. Respondents

WITH
WRIT PETITION NO.7500 OF 2021

Jayco Safety Products Pvt.Ltd .. Petitioner
Versus
Municipal Corporation of Greater
Mumbai and anr .. Respondents

WITH
WRIT PETITION NO.7503 OF 2021

Singhanian System Technologists
Pvt.Ltd .. Petitioner
Versus
Municipal Corporation of Greater
Mumbai and anr .. Respondents

WITH
WRIT PETITION NO.7504 OF 2021

Atul M. Mulye .. Petitioner
Versus
Municipal Corporation of Greater
Mumbai and anr .. Respondents

WITH
WRIT PETITION NO.7501 OF 2021

M/s.Kawachi Group .. Petitioner
Versus
Municipal Corporation of Greater
Mumbai and anr .. Respondents

WITH
WRIT PETITION NO.7502 OF 2021

Keshav Chawda .. Petitioner
Versus
Municipal Corporation of Greater
Mumbai and anr .. Respondents

WITH
WRIT PETITION NO.7506 OF 2021
WITH
WRIT PETITION NO. 7507 OF 2021

M/s.Sahil International Pvt.Ltd .. Petitioner
Versus
Municipal Corporation of Greater
Mumbai and anr .. Respondents

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Mr. Uday Warunjikar with Satyadev D. Joshi for the petitioners.
Ms.Vaishali Chaudhari with Om Suryavanshi for MCGM.

CORAM: BHARATI DANGRE, J.
DATED : 15th DECEMBER 2021

P.C:-

1 Rule. Rule is made absolute. Heard by consent.

2 Heard Mr.Warunjikar for the petitioners and Ms.Vaishali Chaudhari, learned counsel for the MCGM.

3 All the petitions assail the order passed by the Addl. Principal Judge, Dindoshi, who has refused to grant leave under Section 149 of the MRTP Act. The order is passed in the wake of a notice being issued to the respective plaintiffs under Section 53 of the Maharashtra Regional and Town Planning Act (for short 'MRTP Act') and the learned Judge has reasoned that pursuant to the said notice, no reply was filed and the plaintiffs are now apprehending an immediate action. Recording that the plaintiffs have failed to comply with the provisions of MRTP Act, despite sufficient time, they cannot seek liberty, the leave has been refused.

4 Approaching to the impugned notices which are annexed to the petitions, on its perusal it is apparent that the notice issued to the plaintiffs is under Section 53(1) of the MRTP Act, 1966 and the appointed Officer, under Section 152(1) of the

MRTP Act, has exercised the powers and functions of the Planning Authority under Section 53 of the MRTP Act. The notice indicate that since the construction had either commenced, undertaken or the development carried out, is without the permission of the Planning Authority or not in accordance with the permission granted, the noticee are asked to restore the notice structure as per the approved plan or apply under Section 44 of the MRTP Act for retention of the construction by making appropriate application before the competent authority.

Needless to state that the notices are issued by the Planning Authority under Section 53 of the MRTP Act, which permit the Planning Authority to take action for removal of unauthorized development, which is a function germane to the Planning Authority.

5 Under Section 149 of the MRTP Act, there is a bar imposed in the form of refusal to entertain any Suit or other legal proceedings, against every order passed or direction issued by the State Government, or an order passed or notice issued by any Regional Board, Planning Authority or Development Authority under the MRTP Act. The same has been construed to be an absolute bar in entertaining a Civil Suit, being aggrieved by the action under the Act, including the action under Section 53 of the Act.

6 Learned Single Judge of this Court in Sarina Esmeralda Lopex Vs. Vijay Govardhandas Kalantri, 2015(3) All MR 306, has elucidated the scope of the said provision with reference to its object, as under :

“In the context of the challenge which is raised and which revolves around the bar as contained in Section 149 of the MRTP Act it would be necessary to briefly refer to the objects and reasons behind the MRTP Act. The MRTP Act has been enacted to make provision for planning the development and use of land in Regions established for that purpose and for the constitution of Regional Planning Boards therefor; to make better provisions for the preparation of Development plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective, to provide for the creation of new towns by means of Development Authorities; to make provisions for the compulsory acquisition of land required for the public purposes in respect of the plans. The underlying object of the MRTP Act is therefore to have a proper and planned development in the areas to which it applies. It is therefore the statutory obligation of a planning authority to see that the development is carried out in terms of the development plan. The planning authority is therefore vested with the requisite power under the MRTP Act to take action against the unauthorized construction. It is with a view to give finality to the orders passed by the planning authority that the bar under Section 149 of the MRTP Act is provided. There can be no dispute about the fact that the MMC is both the local authority and the planning

authority in so far as the provisions of the MRTP Act are concerned.”

7 The position of law being no more *res integra*, when the plaint instituted by the plaintiffs claiming the relief as prayed therein, posing a challenge to the impugned notices issued under Section 53(1) of the MRTP Act are perused, the pleading canvassed is to the effect that the notice as contemplated under Section 126 of the Mumbai Municipal Corporation Act, cannot be insisted upon, since there is an immediate threat of demolition and therefore, the compulsory waiting period of 60 days as contemplated under Section 526 need to be waived.

8 The learned Judge ought to have considered whether the proceedings that are instituted by the Suit would fall in the teeth of Section 149 and there is no question of granting any leave under Section 149 which has been wrongly assumed in the impugned order and has been rejected on the ground that there was no compliance of the provisions of the Act by the noticee despite sufficient time being granted.

9 In any case, the order which ought to have been passed by the learned Judge was whether the bar under Section 149, operate or not, since there is no question of any leave being granted under Section 149.

10 The learned Judge has however, failed to deal the fundamental issue, whether the Suit assailing the notices are barred under Section 149 of MRTP Act, but has refused to grant leave, which is a course available only when a jurisdictional error is committed by Authority.

 In the aforesaid circumstances, the impugned order is set aside with the matter being remanded to the learned Judge to determine the core issue which arises for consideration, whether the Suit filed by the plaintiffs can be entertained in the wake of the bar created under Section 149 of the Act.

 The necessary orders, after hearing the plaintiffs as well as the Corporation shall be passed within a period of four weeks from today.

 With the aforesaid direction, the impugned order is set aside.

SMT. BHARATI DANGRE, J