

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

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CIVIL APPELLATE JURISDICTION**WRIT PETITION NO.4937 OF 2022**

Shantistar Builders and Developers LLP & Ors. .. Petitioners
Versus
Mira Bhaindar Municipal Corporation & Anr. .. Respondents

Mr.Dinyar Madon, Senior Advocate a/w Mr.Aditya Shiralkar and
Mr.Vijay Poojari i/by Shiralkar & Co. for the petitioners.

Mr.Mayuresh Lagu for the respondent no.1-MBMC.

Mr.Rajesh Khobragade for the intervenor (Ram Adhar Singh).

Mr.Darpan Jain i/by Mr.Rakesh Agrawal for the intervenor (Yogesh
Poojari).

**CORAM : R.D. DHANUKA &
M.G. SEWLIKAR, JJ.**

DATE : 28th JUNE 2022

P.C.:-

. Rule. Mr.Lagu, learned counsel for the respondent no.1
waives service. Rule made returnable forthwith.

2. By this petition filed under Article 226 of the Constitution of
India, the petitioners have impugned the letter/order dated 31st January
2022 issued by the respondent no.2 thereby directing the petitioners to
stop the construction work.

3. On 19th March 2020, the respondent no.1 had issued a
Commencement Certificate for construction of 4 buildings i.e. Building
Nos.E-6, E-8, 22-A and 23-A on plot of land being part of Survey

Nos.734 to 748 in Village Mira-Penkarpada and Plot bearing Survey Nos.194 to 214, 252 to 254 village Bhayandar of layout called 'Shanti Nagar Layout.'

4. On 4th January 2022, the Municipal Commissioner-respondent no.2 issued a notice to the petitioners fixing Online/Virtual hearing on the next day i.e. on 5th January 2022 at 3.45 p.m. In the said notice, it was alleged by the respondent no.2 that several complaints were received against the petitioners alleging violation of Commencement Certificate issued by the respondents and to show why construction mentioned in the notice shall not be demolished.

5. The petitioners accordingly appeared for hearing on virtual platform on 5th January 2022. On 31st January 2022, the respondent no.2 passed an order directing the petitioners to stop the work till further orders in respect of Building Nos.E-6, E-8, 22A and 23-A. The petitioners thus filed this petition.

6. Mr.Madon, learned senior counsel for the petitioners invited our attention to the notice dated 4th January 2022 and also the minutes of the order dated 31st January 2022. He submits that though the respondent no.2 had referred to certain complaints alleged to have been received by the respondent no.2 alleging breach on the part of the petitioners of some of the terms and conditions of the Commencement Certificate, no copy of such complaints were served upon the petitioners. The petitioners was issued a very short notice with a request to remain present Online/Virtual hearing on the next day. He submits that since the Municipal

Commissioner had passed an order after expiry of 25 days, the respondent no.2 could have given proper hearing and copy of the complaints for consideration of the complaints and for response of the said complaints.

7. It is submitted by the learned senior counsel that in past, two such writ petitions were filed by the respondents alleging violation on the part of the petitioners which petitions came to be dismissed by this Court. It is further submitted that though the notice was issued only in respect of the building no.E-6, in the impugned order dated 31st January 2022, the respondent no.2 has passed the order in respect of other three buildings which has not been the subject matter of the notice dated 4th January 2022.

8. Learned senior counsel invited our attention to various averments/grounds made in the petition disputing the correctness of the breaches alleged in the impugned order by the respondent no.2. It is submitted that each and every alleged breach referred to and relied upon in the impugned notice is factually incorrect. He also invited our attention to the affidavit-in-reply filed by the respondent no.1 and would submit that none of the factual averments made by the petitioners in the petition are disputed by the respondent no.1 in the affidavit-in-reply.

9. It is submitted that the notice issued by the respondent no.2 was because of the political interference by some of the local politicians and not on its own merit. It is submitted that interest of large number of flat buyers would be seriously prejudiced if the order dated 31st January 2022 passed by the respondent no.2 is not set aside and the petitioners are not allowed to commence the construction.

10. Mr.Lagu, learned counsel for the respondent no.1, on the other hand, tried to justify the said order passed by the respondent no.2 and submits that various breaches were committed by the petitioners and thus the order stopping the work passed by the respondent no.2 was proper. This Court thus shall not interfere with the order passed by the respondent no.2.

11. Learned counsel for the respondent no.1 does not dispute that the petitioners were given a short notice on 4th January 2022 to remain present Online/Virtual hearing on 5th January 2022 at 3.45 p.m. Though in the said notice dated 4th January 2022, the Municipal Commissioner referred to various complaints alleged to have been received by the Municipal Commissioner alleging violation on the part of the petitioners of some of the terms and conditions of the Commencement Certificate, copy of such complaints was not served upon the petitioners with an opportunity to deal with such complaints. It appears that on 5th January 2022, various parties remained present Online at the time of hearing granted by the respondent no.2 to the petitioners.

12. A perusal of the said minutes of the order dated 31st January 2022 indicates that not only the petitioners and the Municipal Commissioner were present in the said meeting but also various Corporators and various other parties, who were not concerned with the complaints. A perusal of the said order also indicates that the Commissioner has only referred the submissions of several parties present who were not concerned with the subject matter of the notice and rendered a decision stating that there was alleged violation of Condition

Nos.3, 10, 35 and 36 specified in the Revised Commencement Certificate issued on 19th March 2020 on the part of the petitioners. There are no reasons recorded while arriving at such conclusions by the respondent no.2 in the impugned order.

13. In our view, since the respondent no.2 has considered the allegations made by the complainants in the said order, before passing any order by the respondent no.2, copy of such complaints ought to have been served upon the petitioners with advance notice to the petitioners to deal with such complaints. In our view, the impugned order is in gross violation of principles of natural justice.

14. A perusal of the said order indicates that though the said allegations made by the respondents were against the petitioners only, several persons who are not concerned with the subject matter of the notice were also allowed to remain present at the time of Online hearing. It is clear that the impugned order passed by the respondent no.2 is passed because of political interference of local leaders and not on its own merits. Since the impugned order is in gross violation of principles of natural justice, the impugned order deserves to be set aside.

15. At this stage, it is made clear that two of the intervenors, who want to intervene in these proceedings, are not allowed to intervene in view of the fact that the order impugned by the petitioners is in the proceedings between the petitioners and the Municipal Commissioner. If any of the intervenors has any right in the property in question, the intervenors may file appropriate proceedings permissible in law. We have

not expressed any views on the right of the intervenors to file any such proceedings. If any such proceedings are filed by the intervenors, the same should be considered on its own merits.

16. We accordingly pass the following order :-

- (i) The impugned letter/order dated 31st January 2022 issued by the respondent no.2 is quashed and set aside. It is however, made clear that the respondent no.2 is at liberty to issue fresh notice and pass a fresh order after compliance with the principles of natural justice including the service of the copy of complaints received by the respondent no.2 referred in the notice dated 4th January 2022 to the petitioners with sufficient opportunity to deal with such complaints.
- (ii) The order, that would be passed by the respondent no.2, shall be passed on its own merits without being influenced by the observations made and the conclusions drawn in the letter/order dated 31st January 2022 and in accordance with law.
- (iii) If the respondent no.2 proposes to issue any fresh notice and to grant hearing to the petitioners, he shall not allow any political interference at the time of such hearing or otherwise while disposing of such notice, if any, issued to the petitioners.
- (iv) If the petitioners carry out any work, the same shall be subject to the further orders, as may be passed by the Municipal Commissioner, in the action proposed to be initiated, if any, and the order that would be passed by this Court in further

proceedings if filed before this Court.

- (v) The petitioners shall not claim any equity, if any adverse order is passed by the Municipal Commissioner or by this Court in future in respect of such construction. Construction would be at the risk and cost of the petitioners.

17. Writ petition is allowed in aforesaid terms. Rule is made absolute accordingly. There shall be no order as to costs. Parties to act on the authenticated copy of this order.

M.G. SEWLIKAR, J.

R.D. DHANUKA, J.