

Anand

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

WRIT PETITION NO. 4823 OF 2021

M/s. Tejas Mohta Associates

.Petitioner

Vs.

The Deputy Collector & Competent Authority
& ors.

.Respondents

Mr. Sitesh Sharma a/w Ms Asha Kanzariya & Mr. Vijay D. Upadhyay, Advocate, for the Petitioner
Mr. Abhijit Kulkarni a/w Ms Shweta Shah & Mr. Aditya Mahadik, Advocate, for the Respondent Nos. 2 & 3 - PMC
Mr. P. G. Sawant, AGP, for the Respondents – State

**CORAM : S. V. GANGAPURWALA AND
S. G. CHAPALGAONKAR, JJ.**

DATE : 2 DECEMBER 2022

P. C.

. The Petitioner has sought permission purportedly under Section 44 of the Maharashtra Regional Town Planning Act, 1966. The Application of the Petitioner is rejected on the ground that criminal case is pending against the land owners.

2. The learned counsel for the Petitioner refers to the Judgment of the Division Bench of this Court in the case of *S. P. Developers Vs. Municipal Corporation for the City of Pimpri-Chinchwad and others* dtd. 06.06.2017 in *W. P. No. 11329 of 2014*. Learned counsel submits that pendency of

criminal case cannot be ground to bar the processing of the Application of the Petitioner for Commencement Certificate.

3. Mr. Kulkarni, learned counsel for the Municipal Corporation submits that the Corporation relies upon the Government Resolution dated 29.01.2016, however, accedes to the fact that the same was also dealt with and considered in the case of *S. P. Developers (Supra)*. Mr. Kulkarni, Advocate, on being confronted with the Judgment of the Division Bench of this Court in the case of *S. P. Developers*, accedes that facts of the present case are similar to the one involved in the case of *S. P. Developers*.

4. The Division Bench of this Court in the case of *S. P. Developers* in para 11 has observed as under :-

“11. In paragraph 14 of the Voltas judgment, this court has also dealt with and observed that intention of the legislature was not to save vesting of land of which possession was not taken. Although when the Repeal Bill was introduced clause (3) of the Repeal Bill considered provisions which intended to protect and save vesting of even those with the State Government in relation to which an order under Section 10(5) of the Principal Act has been made for delivery of possession as also those lands of which possession has been taken. The Repeal Act

does not provide for such saving if possession has not been taken. This position of law, it has been also affirmed by the Supreme Court in the case of *Vinayak Kashinath Shilkar v. Deputy Collector and Competent Authority* which holds in no uncertain terms in paragraph 10 that where possession of the vacant land has not been taken over by the State Government or by any person duly authorized by the State Government in this behalf or by the Competent Authority, proceedings under the Act would not survive and without actual possession the vesting would be inconsequential. This Court in a number of petitions being Writ Petition No. 1972 of 2013 in the case of *Parshuram Kashinath Joshi v. The State of Maharashtra* has held that the mere pendency of CID enquiry would not entitle the respondents to reject the petitioner's application in the case for grant of occupancy certificate. Similarly, in the case of *Anil Nemichand Bafna v. The Collector, Pune* in Writ Petition no. 3695 of 2014, this court has held in its judgment dated 3rd July, 2015 to which one of us (A. S. Oka, J.) is a party, that the pendency of investigations in certain criminal complaints pending in relation to illegal/irregular orders passed by the Competent Authority or by the Appellate Authorities pursuant to fake/fabricated and/or forged documents should not come in the way of the District Collector considering the application for grant of non-agricultural use of the said land."

5. In the present case also, it is not disputed that possession has not been taken by the Respondents. The possession is with the Petitioner.

6. In view of the Judgment of the Division Bench of this Court in the case of *S. P. Developers*, the Respondent – Planning Authority could not have rejected Application for Commencement Certificate only on the ground that the matter has been referred to CID for making enquiry as to whether any criminal case is pending.

7. In the light of the above, the impugned order is quashed and set aside. The Corporation shall consider the Application of the Petitioner for Commencement Certificate on its own merits.

8. The present order would not be an impediment for the authority under the statute for proceeding with the subject properties, in case, they are entitled to do so.

9. The Writ Petition is disposed of.

(S. G. Chapalgaonkar, J.)

(S. V. Gangapurwala, J.)