

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3868 OF 2021

M/S. Konark Enterprises

...Petitioner

Versus

City And Industrial Development
Corporation of Maharashtra Ltd.
(CIDCO) & Ors.

...Respondents

Mr. Subhsah Jha with Ms. Meena Sharma, Mr. Siddharth Jha,
Ms. Alka Pandey and Ms. Ekta Tiwari i/b Law Global
Advocates, for Petitioner.

Mr. Ashutosh M. Kulkarni with Ms. Akanksha Helaskar for
CIDCO.

Mr. Aakash Kothari with Ms. Niharika Singh i/b Little & Co. for
Respondent No. 2

**CORAM: A. A. SAYED &
ABHAY AHUJA, JJ.**

DATE : 25th FEBRUARY 2022

P.C. :-

1. The Petition is filed by the Petitioner seeking the following reliefs.

(a) This Hon'ble Court may be pleased to issue a writ of mandamus, or any other writ/ order or direction in the nature of mandamus, thereby holding that the action of Respondent No. 1 of the demolition of the tin

sheet fencing and the tin sheet security cabin in respect of land of the Petitioner admeasuring 2870 sq meters equivalent to 28.70 Ares equivalent to 30,892.68 sq. feet, which is around 28.37 gunthas; bearing Survey No. 187/4A of village Kharghar, Taluka Panvel, District Raigad is unconstitutional and illegal and directing the Respondent No. 1 to restore a statusquo ante as on 22/07/2021 in respect of the said tin sheet fencing and tin shed security cabin in the land of the petitioner admeasuring 2870 sq mtrs equivalent to 28.70 Ares equivalent to 30,892.68 sq. feet, which is around 28.37 gunthas; bearing Survey No. 187/4A of village Kharghar, Taluka Panvel, District Raigad.

(b) This Hon'ble Court may be pleased to issue an appropriate direction to the Respondent No. 1 to reconstruct the tin sheet fencing and temporary tin sheet security cabin on the land of the petitioner admeasuring 2870 sq mtrs equivalent to 28.70 Ares equivalent to 30,892.68 sq. feet, which is around 28.37 gunthas; bearing Survey No. 187/4A of village Kharghar, Taluka Panvel, District Raigad.

In the alternative to prayer clause (b) above:-

(c) This Hon'ble Court may be pleased to permit the petitioner to

reconstruct the boundary fencing and the temporary security cabin on the land of the petitioner admeasuring 2870 sq mtrs equivalent to 28.70 Ares equivalent to 30,892.68 sq. feet, which is around 28.37 gunthas; bearing Survey No. 187/4A of village Kharghar, Taluka Panvel, District Raigad and restrained the Respondent No. 1 from causing any obstruction/ disturbance to the Petitioner/ its agents, representatives or any person(s) acting through the Petitioner in the said reconstruction and other allied works

2. It is an admitted position that the tin sheet fencing and tin sheet security cabin erected by the Petitioner have already been demolished.

3. On 23rd February 2022, we had indicated to the learned Counsel for the Petitioner that in absence of any permission from the Respondent-CIDCO in respect of the construction of the tin sheet fencing and tin sheet security cabin, we are not inclined to entertain the Petition. Learned Counsel for the Petitioner requested to defer the matter to take instructions from the Petitioner whether it had applied for any permission to construct the tin sheet fencing and tin sheet security cabin.

4. Today, learned Counsel for the Petitioner states that

the Petitioner is not required to take any permission of Respondent- CIDCO for the construction of tin sheet fencing and tin sheet security cabin. He has placed reliance upon Regulation No. 2.1.2, Chapter No. 2 of Unified Development Control and Promotion Regulations for Maharashtra State which speaks of cases where permission from Planning Authority is not necessary.

5. We have perused the said Regulation No. 2.1.2. It nowhere says that no permission is required to construct tin sheet or tin sheet security cabin. Learned Counsel for the Respondent- CIDCO submits that the Petitioner is not owner of the subject land and the subject land was acquired and the name of Panvel Mumbai National Highway has been inserted in the Revenue Record after deleting the name of the Petitioner. It is pointed out that the Petitioner had applied for grant of development permission of the subject land and the proposal was rejected.

6. There are serious issues of title of the Petitioner to the subject land involved. Considering the nature of issues involved this is not a fit case to exercise the extraordinary and discretionary writ jurisdiction of this Court.

7. The Writ Petition is dismissed. We, however, grant liberty to the Petitioner to make an Application to Respondent-CIDCO in accordance with law to construct a tin sheet fencing and tin sheet security cabin. If such Application is made, the same shall be decided expeditiously and in accordance with law.

8. For completion of record, we may state that the learned Counsel for the Petitioner has placed reliance on the judgment of the Supreme Court in ***Municipal Corporation of Greater Mumbai & Others v/s. Sunbeam High Tech Developers Pvt. Ltd., [2019] 20 SCC 781*** and the judgment of the Division Bench of this Court in ***Sopan Maruti Thopte & Another v/s. Pune Municipal Corporation & Another [1996] (1) Mh.L.J.-963.*** The judgment of the Supreme Court in ***Sunbeam High Tech Developers Pvt. Ltd.*** (supra) as a matter of fact hold that an illegal structure cannot be permitted to be re-erected.

YUGANDHARA
SHARAD PATIL

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(ABHAY AHUJA, J.)

(A. A. SAYED, J.)