

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CIVIL WRIT PETITION NO. 519 OF 2020

Manikanta K. Nair and anr.

....Petitioners

Versus

The State of Maharashtra and ors.

....Respondents

Mr. Minal Vijay Chavan for the Petitioners.

Mr. Amit Shastri, AGP for Respondent Nos.1 to 3.

Mr. Hemant P. Ghadigaonkar for Respondent No.4.

**CORAM : PRASANNA B. VARALE &
SHRIKANT D. KULKARNI, JJ.**

DATE : 13th JUNE, 2022.

P.C. :

1. Heard learned counsel for the Petitioners.
2. The following facts emerged from the perusal of the material placed on record;
 - i. The Petitioners are running their business having their shop No.1 and 2 respectively in Survey No.111-D, CTS No.825, RTO Road, near Satatarka Co-operative Housing Society, Andheri (W), Bombay.
 - ii. One Respondent No.4 – Federation of Cooperative Housing Society “Ekta Association” duly registered under the Public Trust Act, submitted an Application to the Competent Authority i.e. the District Collector for Mumbai suburb, to grant permission to

erect a Board and to beautify the open area.

iii. on receipt of Application, the Collector, MSD by exercising his powers granted permission subject to certain conditions. The order granting permission dated 3rd June, 2005 is placed on record as Exhibit 'D'. The conditions were viz.

- a. The ownership of the property i.e. piece of land would permanently vest in State Government. The said Society would not claim any right whatsoever in future in the said piece of land.
- b. The Society would bear the expenses for erection of Board.
- c. The said piece of land reserved as open area be kept vacant and open to the public at large.
- d. The Society is declined to carry out any construction activity on the said piece of land.

3. It is grievance of the Petitioners that inspite of a very specific condition, the Society erected a compound wall and under the guise of beautification / modification of the land, the Society is developing the land.

4. On the backdrop of this grievance, the following prayers are made in the Petition;

- a) issue a writ of Mandamus or or a writ in the nature of mandamus or any other appropriate writ, order or direction to the Respondent

No.2 to immediately take the action on the said Ekta association in view of the site report dated 02/04/2013 issued by the Respondent No.3;

- b) demolish the illegal structures erected by the Respondent No.4 on the said land and to cancel the permission dated 03/06/2005 granted to the Respondent No.4 to maintain the said land;
- c) hold enquiry of the officers of the Respondent No.2 and to take the strict civil and criminal actions against such officers who did not take action against the Ekta Association thereby completely ignoring their own document viz. site report dated 02/04/2013;

5. On a query put to the learned counsel as to whether the Petitioners have approached the Authority, apprising the Authority about their grievance by way of any representation. The learned counsel for the Petitioners submitted that the representation was submitted to the Deputy Collector (Enr.) and competent Authority by way of legal notice dated 26th February, 2019. A copy of the said legal notice is placed on record as Exhibit 'F' at page 49 to the Petition. Vide order dated 17th February, 2020 passed by this Court, Respondent Nos.1 to 3 were directed to file an affidavit stating what action has been taken with reference to report of the Tahsildar dated 2nd April 2013. In response to the said order, a detailed affidavit is filed on behalf of Respondent Nos.1 to 3 through Shri Sachin L. Bhalerao, Tahsildar. The said affidavit-in-reply refers to the factual aspect namely the Application being filed by Respondent No.4 for grant of permission, then the order passed by the Collector, MSD on 3rd June, 2005

exercising the powers for grant of permission under the Maharashtra Land Revenue Code, 1966. It is further stated in the affidavit-in-reply, that one Mr. Jethalal R. Patel made an Application to the State of Maharashtra for the allotment of the very same land. On receipt, the said Application was forwarded to the Collector, MSD. The Collector, MSD called for an enquiry report from the Tahsildar Andheri. The Tahsildar, Andheri in turn instructed the Circle Officer, Varsova to carry out spot inspection of the said land and submit a report to the Thsildar, Andheri. The Circle Officer, Varsova submitted a report to the Tahsildar Andheri on 22nd March, 2013. The report referred to the following facts;

- (i) That the Permission has been given to Federation of Co-operative Housing Society Ekta Association for beatification and fixing the board by filling the said land on certain terms and conditions without charging any Government Fees.
- (ii) That there is a constructed compound wall on all the four sides of the said land.
- (iii) That there is an Iron Gate to enter the garden in the said plot on the side of RTO Lane Road.
- (iv) On the left side of the Gate there is a construction of 2.5 x 5 feet concrete which is use for keeping electric meter.
- (v) Next to the said constructions there is a pacca construction of about 10 x 10 feet on the said land which is used for keeping gardener's luggage who resides there.
- (vi) The aforesaid two constructions are made out of corporate

and MLA fund in the year 2015.

- (vii) On the right side of the Gate, there is 2 (two) Iron Polls installed in the garden with Net for practicing Cricket.
- (viii) Behind the place of Cricket Net Practicing there is a round shape shed built and is used as Yoga Classes.
- (ix) High Mast lights are installed in the year 2016 and 2017 and the work of paver block on all the side of garden and inside the garden has been done from the Corporator's fund in the year 2017-2018.
- (x) On the left side of the Gate there is an Iron Material made Toys installed for children to play with and the work has been done out of the Corporator's fund in the year 2014-2015.
- (xi) The said work has been carried out without obtaining the permission from the Office of the Collector, MSD and therefore there is violation of the conditions mentioned in the permission letter dated 03.06.2005 and therefore recommended the cancellation of the said Permission to the aforesaid Association.

Then reference made to policy framed by the State Government for allotment of land and various Government Resolutions wherein the policy had undergone certain changes. It is very interesting fact emerges from the reply and it is stated in the affidavit-in-reply that the Petitioners have also illegally and unlawfully encroached upon the Government land bearing Survey No.111-D, CTS 825 at village Ambivali by illegal construction & Notice dated 7/9th April, 2021 under Section 50(3) the Maharashtra Land

Revenue Code was issued to the Petitioners. It seems that being aggrieved, the Petitioners had filed Writ Petition and certain orders were passed in the said Writ Petition.

6. A perusal of the affidavit-in-reply further shows that one more letter was received by the Collector, MSD raising grievance against Respondent No.4 for committing breach of the conditions and the Collector, MSD sought for a report from the Tahsildar. The Tahsildar carried out inspection and submitted his report dated 13th January, 2020 to the Collector. The Collector was apprised about certain encroachment carried out on the said piece of land. The Collector, MSD then by letter dated 7th April, 2021, directed the Deputy Collector, Encroachment to take steps. The date was fixed for consequent action i.e. 28th May, 2021, but for non availability of the sufficient police force, the consequent action was deferred. Then there is a reply filed by Respondent No.4 on 23rd August, 2021. Some facts already referred are reiterated in the affidavit-in-reply filed at the instance of Respondent No.4. It is submitted in the affidavit-in-reply that the Deputy Collector and competent Authority, MSD vide order dated 9th June, 2021 informed Respondent No.4 about the grievance in respect of breach of conditions. A reference is also made in the said order to the present Petition. A reference is made to a report submitted to the office of Collector dated 21st January, 2021. The Communication dated 9th

June, 2021 concludes that an opinion of the Deputy Collector, MSD that Respondent No.4 had committed breach of the conditions and then Respondent No.4 is informed to remove the said unauthorized construction within stipulated period of 7 days, in failure to remove the said unauthorized construction, Respondent no.4 is cautioned for demolition and action of recovery of expenses for demolition from Respondent No.4 as the arrears of land revenue. This communication order is the subject matter of the Appeal preferred before the Additional Divisional Commissioner, Konkan Division at the instance of Respondent No.4.

7. The above referred factual aspects indicate that the competent Authority on receipt of the representation of the Petitioner in form of legal notice sought for necessary report through the Tahsildar. The Deputy Collector and the competent Authority, MSD issued order dated 9th June, 2021 by forming an opinion about breach of conditions and Respondent No.4 preferred an Appeal against the order.

8. Considering these facts, we are of the opinion that at this stage, no further order is required to be passed. In case the Appeal is decided by the Competent Appellate Authority, the parties certainly can avail an appropriate remedies in view of order passed by the Appellate Authority. Needless to state, that keeping this liberty open to the parties, the Writ Petition is disposed of accordingly.

9. Learned AGP submits that the reply on behalf of Respondent Nos.1 to 3 was ready and the copy was also supplied to the learned counsel appearing for the Petitioners as well as learned counsel appearing for Respondent No.4, but for certain technical reasons, the reply was not filed in this Court. Learned AGP prayed for accepting the affidavit-in-reply at the bar. Affidavit-in-reply is accepted and taken on record as annexure to the Petition.

10. We further make it clear that this Court has not observed anything on the merits of the Appeal presented before the Authority at the instance of Respondent No.4. The Appellate Authority to decide the Appeal and Application, if any, submitted to the Authority on its own merits, needless to state further by giving equal opportunity of hearing to the parties.

(SHRIKANT D. KULKARNI, J.)

(PRASANNA B. VARALE, J.)