

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

WRIT PETITION NO.3717 OF 2022

Jolly Brothers Private Limited and Anr. .. Petitioners
v/s.
The State of Maharashtra Thr. Its
Principal Secretary and Ors. .. Respondents

Mr. Virag Tulzapurkar, Senior Advocate a/w. Mr. Chirag Kamdar, Mr. Suraj Juneja, Mr. Akshit Dedhia i/by M/s. Wadia Ghandy & Co., for the petitioners.

Mr. Hemant Haryan, AGP for respondent No.1 – State.

Mr. Anoop Patil a/w. Ms. Sheetal Metakari i/by Mr. Sunil Sonawane, for respondent Nos.2 to 5 – MCGM.

Mr. Hemant Shriram Madhvi, Sub-Engineer (BP) Municipal Corporation present in the Court.

Mr. Ajay Patil, Naib Tahasildar (Land) [Lease Branch – Mumbai Suburban] present in the Court.

**CORAM : R.D. DHANUKA &
KAMAL KHATA, JJ.
DATED : 19TH OCTOBER, 2022.**

P.C. :

1. Rule. Learned AGP waives service for respondent No.1. Mr. Patil, learned counsel waives service for respondent Nos.2 to 5. Rule is made returnable forthwith.
2. By this petition filed under Article 226 of the Constitution of India, the petitioners have prayed for a writ of certiorari for quashing and setting aside Impugned Decision reflected in Note dated 16th March, 2020 and Impugned Letter dated 8th June 2021 issued by the Municipal Corporation.
3. The petitioners have also prayed for writ of mandamus against respondent Nos. 2 to 5 to withdraw/cancel the Impugned Decision reflected in Note dated 16th March, 2020 and Impugned Letter dated 8th June 2021. The petitioners have prayed for an order and direction against respondent Nos.2 to 5 to process and sanction the application made by the petitioners for development permission of buildable reservation of police staff quarters and all applications in relation to the said property, in accordance with law and without reference to the interim order dated 14th January, 1997.

4. Though, there are wide prayers in forming prayer clauses (a) and (b), Mr. Tulzapurkar, learned senior counsel for the petitioners on instructions, states that the petitioners pray for a writ of certiorari for quashing and setting aside the impugned decisions dated 8th June 2021 insofar as they refuse to grant permission in view of the interim order dated 14th January, 1997 passed by this Court in Writ Petition no.5792 of 1996, at this stage. Statement is accepted.
5. It is the case of the petitioners that, though, there was an agreement to lease entered into between one Khot and the petitioners on 5th March 1957 and consent terms on 11th October 1957, the lease was granted by respondent No.1 in favour of the petitioners in respect of land bearing Survey No.275 (part) admeasuring 80 acres. The said lease was subsequently modified in view of the Government Resolution passed on 17th February 1984. The lease agreement was entered into in respect of 58 acres 36 $\frac{1}{4}$ gunthas in respect of CTS No.657-A on 21st June 1995 and for 7 acres 3 gunthas and 12 annas on 9th June 2004 in land bearing Survey CTS No.657-A.
6. The petitioners thereafter applied for permission to the Municipal Corporation for sanction of development permission. On 6th

August 2019 and 20th December 2019, the Municipal Corporation granted NOC/provisional development permission for construction of buildable reservation of police staff quarters on the said property and for construction of buildable reservation of affordable housing on the said property respectively. It appears that the law officer addressed a note to the Municipal Corporation on 16th March 2020, stating that this Court had already granted interim order dated 14th January, 1997 in Civil Writ Petition No.5792 of 1996 for the land bearing CTS No.657 (part) and unless a clarification is obtained by the petitioners from this Court in said Writ Petition No.5792 of 1996, the application for sanction of plan shall not be proceeded with.

7. The petitioners thereafter on 29th March 2022, applied for seeking clarification of the said order dated 14th January 1997 in the Writ Petition No.5792 of 1996 by filing an Interim Application. However, the petitioners were advised not to pursue the said interim application in view of the fact that petitioners were not parties to the said writ petition and were advised to adopt independent proceedings for impugning the decision taken by the Municipal Corporation and for the clarification of the order passed by this Court in the said writ petition. The petitioners

accordingly filed this petition.

8. Mr. Tulzapurkar, learned senior counsel for the petitioners invited our attention to the various documents executed by the State Government in favour of the petitioners and submitted that in respect of the land admeasuring 14.01 acres, which was carved out of 80 acres land, the Municipal Corporation had already granted permission for carrying out development. He invited our attention to the orders passed by the Municipal Corporation dated 8th June, 2021 annexed at page No.127 and 128 of the writ petition. He submitted that the permission to the petitioners is refused by the Municipal Corporation on the ground that there was an interim injunction passed by this Court in Writ Petition No.5792 of 1996. He submitted that though, there are other conditions imposed in the said order, the petitioners are restricting their challenge only to the part of the said order insofar as refusal of permission on the ground of an interim injunction by this Court in Writ Petition No.5792 of 1996 is concerned, at this stage.

9. It is submitted by the learned senior counsel that in the said Writ Petition No.5792 of 1996 neither the petitioners nor the

Municipal Corporation were parties. He submitted that interim reliefs granted by this Court in the said writ petition on 14th January 1997 were thus, not applicable to the petitioners or to the Municipal Corporation. In support of his submission, learned senior counsel placed reliance on the judgment of the Supreme Court in the case of *Kishorsinh Ratansinh Jadeja v. Maruti Corporation & ors.*¹ particularly, paragraph Nos.31, 32, 37 and 38. He also placed reliance on the judgment of the Supreme Court in the case of *West Bengal Housing Board v. Pramila Sanfuland & ors.*² and particularly paragraph No.25.

10. Learned senior counsel invited our attention to the steps taken by the State Government and the Municipal Corporation in the affidavit in reply filed in this petition. He fairly pointed out that pursuant to the order passed by the Division Bench of this Court, the State Government had conducted an enquiry in respect of various plots of land. He submitted that the said enquiry report dated 15th March 2021 is now placed by the State Government on record by filing an affidavit dated 13th October 2022. He submitted that till date i.e. for a period of almost 18 months, the State Government had not initiated any action against the

1 (2019) SCC 229

2 (2016) 1 SCC 743

petitioners in respect of the land in question though, there was some observations made by the enquiry officer in the said report. He submits that this Court may clarify that the permission for carrying out development if granted by the Municipal Corporation would be subject to the action that may be initiated by the State Government based on the said enquiry report in accordance with law.

11. Mr. Patil, learned counsel for the Municipal Corporation, on the other hand, submitted that the Municipal Corporation has, as a matter of record, not refused to grant any permission in favour of the petitioners. In the impugned orders, the Municipal Corporation has not only referred to the interim order passed by this Court, but has also referred to the various other conditions including the conditions, which required the petitioners to obtain permission from Collector. He submitted that if any action is taken by the State Government in respect of the land in question, the Municipal Corporation is bound to take into consideration the action if any, taken by the State Government.

12. The learned AGP, on the other hand, had adopted the submissions made by Mr. Patil, learned counsel for the Municipal

Corporation and submitted that there are various observations made by the enquiry officer in respect of the land in question against the petitioners. The State Government may initiate action based on the said enquiry report in respect of the land in question. If this Court proposes to grant any relief in favour of the petitioners, it shall be made clear that the rights of the State Government to initiate any action in accordance with law, based on the enquiry report or otherwise, are not prejudiced. He also submitted that the petitioners are required to submit NOC from Collector.

13. In rejoinder, Mr. Tulzapurkar, learned senior counsel for the petitioners submitted that the petitioners are not required to obtain certain permissions prescribed as a condition precedent in the sanction granted by the Municipal Corporation. He submitted that his clients are restricting the prayers insofar as this petition is concerned i.e. only in respect of the refusal on the part of the Municipal Corporation on the ground of interim relief granted by this Court in Writ Petition No.5792 of 1996.

14. It is not in dispute that the Municipal Corporation has not considered the application for permission on the ground that

there was an interim injunction granted by this Court in a writ petition filed before this Court apart from other issues. Since the petitioners have restricted their prayers only in respect of the refusal of the permissions on the ground of interim injunction granted by this Court, we think it appropriate to make it clear at this stage that we do not propose to make any adjudication on the issue with regard to any such permissions which are prescribed in the orders passed by the Municipal Corporation to be obtained by the petitioners, if such permissions are required in accordance with law, the petitioners will have to comply with those conditions as a condition for grant of sanction or permission. It is for the petitioners to decide whether they want to comply with or not. We do not propose to make any comment on the validity of those other conditions prescribed in the orders, at this stage.

15. The learned counsel for the Municipal Corporation as well as the learned AGP did not dispute that neither the petitioners nor the Municipal Corporation were parties to the said writ petition, in which the interim order came to be passed by this Court. The Hon'ble Supreme Court in case of *Kishorsinh Ratansinh Jadeja* (supra) and *West Bengal Housing Board* (supra) has held that the injunction order granted by the Court in a suit are binding only

on the parties to the suit and not to a third party. The said principles can be extended to the parties to the writ petition. The principles laid down by the Hon'ble Supreme Court in the *Kishorsinh Ratansinh Jadeja* (supra) and *West Bengal Housing Board* (supra) apply to the facts of this case. We are respectfully bound by the said judgment.

16. Insofar as submissions made by Mr. Patil that, the petitioners, as a matter of fact, have applied for clarification of the said order passed by this Court in the writ petition and without any reasons withdrew the said interim application is concerned, we are inclined to accept the submissions made by Mr. Tulzapurkar, learned senior counsel for the petitioners that the petitioners withdrew the interim application and filed this independent substantive writ petition since the petitioners were not parties to the said writ petition and the petitioners were advised to withdraw the said interim application and to file an independent substantive proceeding. The making of the said application by the petitioners and withdrawal of such application, in the facts of this case thus, would not be a bar for filing this writ petition.

17. Insofar as the apprehension of the Municipal Corporation and the State Government that, the petitioners cannot refuse to comply with the other conditions imposed in the order passed by the Municipal Corporation is concerned, since the petitioners have restricted their prayer only arising out of the interim order passed by this Court, we make it clear that we have not gone into the validity of those other conditions.

18. Insofar as the apprehension of the State Government that, in the enquiry report submitted by the enquiry officer pursuant to the order passed by this Court in PIL making various observations about alleged breach in the lease deed against the petitioners are concerned, though, the State Government has not initiated any action against the petitioners till date, we make it clear that if the State Government is entitled in law to take any action against the petitioners based on the said enquiry report, the State Government may initiate such action as may be permissible in law. As and when any such action is initiated by the State Government, it is for the petitioners to decide whether to impugn such action on the part of the State Government or not.

19. We accordingly pass the following order:

: ORDER :

- (a) The impugned decisions dated 8th June 2021 annexed at “Exhibits M and N” to the petition are quashed and set aside insofar as they refuse the permission on the ground that there was an interim order dated 14th January 1997 passed by this Court in Writ Petition No.5792 of 1996 is concerned. We have not expressed any view on the other conditions imposed by the Municipal Corporation in the said letters. The validity of the conditions is kept open.
- (b) The Municipal Corporation is directed to process and sanction the application made by the petitioners for development permission for construction of buildable reservations of police staff quarters and affordable housing and all applications in relation to the said property in accordance with law and without reference to interim order dated 14th January 1997, expeditiously.
- (c) It is made clear that the said permission/sanction if any, granted by the Municipal Corporation on the applications made by the petitioners for development permission would be subject to the action if any, taken by the

State Government based on the enquiry report or otherwise in accordance with law. The rights of the petitioners are kept open to challenge such action if any, initiated by the State Government.

- (d) If the petitioners propose to challenge the other conditions forming part of the permissions granted by the Municipal Corporation prior to the communication dated 8th June 2021 or in the said communication dated 8th June 2021, the same shall be considered by the Court on its own merits and in accordance with law.
- (e) Interim order dated 14th January 1997 passed by this Court would not apply to the application for sanction made by the petitioners.

20. Writ petition is made absolute in aforesaid terms. Rule is made absolute accordingly. No order as to costs.

22. Parties to act on the authenticated copy of this order.

(KAMAL KHATA, J.)

(R.D.DHANUKA, J.)