

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

WRIT PETITION NO.5518 OF 2023

Babasaheb Balu Gadkari)
Age 74 years, Occ. Retired,)
Residing at Datta Colony (East))
Miraj, Taluka Miraj District Sangli.) .. Petitioner

Versus

1. The Sangli Miraj Kupwad Municipal)
Corporation, The Commissioner,)
Having office at Rajwada Chouk,)
Opposite City Police Station, Sangli 416416)
2. Assistant Director of Town Planning)
Sangli Miraj Kupwad Municipal Corporation))
Having office at Rajwada Chouk,)
Opposite City Police Station, Sangli 416416)
3. Town Planer, City Planning Department)
Miraj, Sangli Miraj & Kupwad Municipal)
Corporation, Office at Miraj.)
4. Shakha Engineer, City Planning Department))
Miraj, Sangli Miraj & Kupwad Municipal)
Corporation, office at Miraj)
5. The State of Maharashtra)
Through minister of Urban Development)
Department, Mantralaya, Mumbai.)
6. DDG Compliance, TERM Cell,)
office at 1st floor,)
Khamla Telephone Exchange,)
Nagpur 440025)
7. Reliance Jio Infocomm Limited)
A company incorporated under the)
provisions of the Companies Act, 1956,)

having its Regional office at DTC Mall,)
2nd floor, Near Mhatre Bridge, Erandwane)
Pune 411004, Maharashtra.) .. Respondents

Mr.Balasaheb G. Ligade for the petitioner.
Mr.G.H.Keluskar for the respondent nos.1 to 4.
Mr.A.A. Alaspurkar, AGP for the respondent no.5.
Mr.Gaurav Thakur a/w Mr.Kshitij Madekar i/by A.S. Dayal and Associates for respondent no.7.

**CORAM : SUNIL B. SHUKRE &
JITENDRA JAIN, JJ.**
DATE : 15th June 2023

ORAL JUDGMENT (Per S.B.Shukre, J.) :-

. Heard.

2. Rule.

3. Rule is made returnable forthwith. With the consent of the parties, the petition is taken up for final disposal at the stage of admission.

4. This is a case wherein without much difficulty, this Court can say that the respondent Corporation has singled out the Petitioner. The permission granted to the petitioner for erecting mobile tower on his Plot No.98, CTS No.138/7 situated at Datta Colony, Tal. Miraj, Dist. Sangli was subsequently withdrawn in a high handed manner by the respondent no.2.

5. Initially the permission so granted was cancelled by the communication dated 13th March 2020. When the petitioner approached this Court, the Corporation was directed to reconsider the case of the

petitioner. Thereafter, when the matter came up before the respondent no.2, again permission was refused but the reason given this time was different. It was stated that due to pendency of the civil suit on the similar issue, the permission granted earlier could not be revived by the Corporation. Again the petitioner approached this Court and showed his willingness to withdraw the civil suit. This Court directed the respondent no.2 to reconsider its earlier order on the condition that the petitioner would be withdrawing the suit. The petitioner complied with all the conditions imposed by this Court and thereafter, the order by which the permission was rejected, came to be cancelled and the order of granting permission was continued.

6. Thereafter, one more complaint was received by the respondent no.2 and then the respondent no.2 again cancelled the permission granted to the petitioner on the ground that erection of mobile tower on the piece of land of the petitioner has created an issue about maintenance of law and order in the locality.

7. It may not be out of place to mention here that in the case of similar complaints received by the Corporation in respect of the mobile tower belonging to some other person, the respondent no.2 Corporation adopted a different approach which was quite discriminatory in its nature. While the respondent no.2 accepted the ground of maintenance of law and order situation as valid for withdrawing the permission already granted to the petitioner, the more or less similar ground taken up by other residents in their complaints against another was considered to be not sufficient for cancelling the permission granted to other person for erecting the mobile tower. In that case, as is evident from the

communication dated 16th July 2021 (page 39) issued by the Corporation to Girij Prasad Mina and others, the Corporation had refused to entertain their complaints seeking cancellation of permission granted for erection of other mobile tower on the ground that those persons were required to approach “Termcell” established by the Department of Telecommunication.

8. Examining this case in the backdrop of the above facts, we find that Corporation has acted in a discriminatory and arbitrary manner and singled out the petitioner alone for cancellation of the permission. Besides, the ground taken by the Corporation for again cancelling the permission granted to the petitioner appears to be based upon no material whatsoever.

9. It is seen from the reply of the respondent no.2 that the respondent no.2 had acted merely on the basis of some complaints received from the residents of the locality. Mere receipt of the complaints taking objection to erection of mobile tower by itself would not be enough for the authorities to reach the requisite subjective satisfaction, unless there is available on record some material. The Corporation seems to have made no effort to gather such material.

10. That apart, reaching a subjective satisfaction regarding maintenance of law and order situation is something which is not within the purview of the MCGM authorities. The duty of maintaining the law and order situation in the society is entrusted to the Police Authorities and District Magistrate and certainly not a local authority like respondent no.2. If the respondent no.2 had any apprehension about disturbance of

the law and order in the locality where the present mobile tower is standing, it was the duty of the respondent no.2 to approach with sufficient material the concerned District Magistrate and/or the Commissioner of Police or the concerned police station and seek the opinion of that authority, which has not been done by the respondent no.2. Rather, the MCGM has taken upon itself the job of maintaining the law and order in the locality. Such approach of the respondent no.2 is violative of principle of rule of law.

11. In the result, we find that the impugned order cannot be sustained and deserves to be quashed and set aside.

12. The petition is allowed and the impugned order is hereby quashed and set aside. Rule is made absolute accordingly.

JITENDRA JAIN, J.

SUNIL B. SHUKRE , J.