

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10862 OF 2023**

Prabhakar Pandurang Chorghe ...Petitioner
Versus
The Municipal Corporation of Cities of Vasai & ...Respondents
Ors

**Mr Narendra Walawalkar, Senior Advocate, with Suresh M
Sabrad, Amey Sawant, Gracy Saldana & Pratik Sabrad, for the
Petitioner.**

**Mr MPS Rao, Senior Advocate, with Swati Sagvekar, for
Respondents Nos. 1 & 5 (VVMC).**

Mr Sachin J Kadam, for Respondent No. 2.

Ms MP Thakur, AGP, for Respondents Nos. 3 & 4-State.

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**CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 13th October 2023**

PC:-

1. Heard.

2. We are not inclined to entertain this Petition. Prima facie this appears to be a personal private dispute between the Petitioner and the 2nd Respondent. They are brothers. The challenge in the Petition is to an order dated 10th August 2023 (page no. 431) passed by the Municipal Commissioner of the Vasai Virar City Municipal

Corporation. The order rejects an application made by the Petitioner after several dates of hearing. It holds that an initial commencement certificate (“CC”) granted by the corporation on 8th October 2021 in favour of the 2nd Respondent stood superseded by a revised permission/CC dated 31st March 2023. This in turn was based on an updated measurement sheet by the Taluka Inspector of Land Records (“**TILR**”).

3. Mr Walawalkar for the Petitioner contends that the impugned order betrays a complete non-application of mind. He draws our attention to the fact that there were two previous orders of this Court. The order of 8th September 2022 inter alia required the Municipal Corporation to consider the Petitioner’s representation and the 2nd Respondent’s reply along with documents, to grant a personal hearing and to decide whether the 2nd Respondent had committed any breach of the 8th October 2021 permission and the CC described in the previous Writ Petition No. 858 of 2022 filed by this Petitioner.

4. The grievance is that by the impugned order this direction of the High Court has not been followed at all. The Municipal Commissioner has simply stated that the 8th October 2021 permission is superseded. The complaint also is that previous Bench was not told of the revised measurement sheet which is of 11th January 2022. The Affidavit in Reply of the 1st Respondent erroneously says that Division was pursuant to the order of the Court although the Court’s order was of 8th September 2022.

5. We note incidentally that there is already a pending civil suit between the parties filed in the Vasai Court. A copy of the plaint and the interim application in that suit are annexed. The final prayers sought in the suit are at pages 102 and 103 of the present paperbook. That suit also seeks that no permission be granted to the 2nd Respondent. A copy of the interim application is at page 110. It is said to be yet pending. The 2nd Respondent has independently filed an application under Order VII Rule 11 of the Code of Civil Procedure 1908.

6. There are thus disputed questions of fact including as to title to the property in question. The Petitioner claims ownership of certain land and alleges that the 2nd Respondent is a habitual encroacher. He is alleged to have encroached even on land owned by the Petitioner. Paragraph 3 of the Petition at pages 7 and 8 describes several survey numbers including Survey No. 294, Survey No. 304, Survey No. 305 and various Hissas and says that these are owned by the Petitioner “and other family members”. It goes on to say that the 2nd Respondent, the Petitioner’s brother owns land bearing Survey No. 294 with a different Hissa numbers admeasuring 8.50 Are also in the same village. The question of ownership and whether or not there is encroachment are matters of fact that cannot possibly be decided in our writ jurisdiction. According to Mr Walawalkar, the record indicates that the earlier question was whether the disputed land was 950 sq mts or 985 sq mts. The revised TILR or the updated TILR report now shows it as 1000 sq mts. No copy of the TILR report was given to the Petitioners. No notice was given of any exercise being undertaken by the TILR.

Therefore, the Commissioner could not have based any order on that TILR Report. This is the submission on behalf of the Petitioner.

7. As to the question of a survey and the TILR measurement sheet, the Petitioner has sufficient alternative remedies in law. If it was the 2nd Respondent's property that was being measured, it does not stand to reason that the Petitioner ought to have been given notice. There is no question of a 'hearing' by the TILR. Again, this takes us back to a title dispute. The Petitioner would first have to establish title according to law to be able to sustain such an argument.

8. We note that the Petitioner also makes serious allegations (at the very head of the Petition in paragraph 2 of fraud against inter alia the Municipal Corporation. Fraud must be pleaded with particulars in a civil proceeding. A mere allegation of fraud is never enough. Even a simple averment of fraud is not enough. Assuming there are particulars, these averments and assertions would require proof and would need to be tested in a civil proceeding according to law, i.e., while being subjected to evidence and cross-examination.

9. The entire construct of the Petitioner proceeds on the footing that what he alleges is admitted to be true, or has been so found to be true. Neither of these is an accepted position.

10. The other concern that we have is that an order of the kind that the Petitioner seeks today and particularly what is sought in prayer clauses (b) and (c) would result literally in a hijacking of the

civil suit, rendering it and its interim application and the Order VII Rule 11 application entirely infructuous. This is not a course of conduct that we are at all inclined to embark on.

11. So that there is no ambiguity we set out prayer clauses (b) and (c) at pages 60 and 61.

“(b) to issue an appropriate writ, order or direction for quashing and setting aside the impugned order dated 10.8.2023 passed by Respondent No. 1 rejecting the representation seeking to quash and set aside the building permission, sanctioned plan, commencement certificate dated 08.10.2021 as well as revised building permission, sanctioned plan, commencement certificate bearing No. VVCMC/TP/CC/VP-6319/668/2022-23 dated 31.03.2023, occupation certificate and further certificates issued from time to time by Respondent No. 1 in favour of Respondent No. 2 and further be pleased to allow the same;

(c) to issue an appropriate writ, order or direction for quashing and setting aside the building permission, sanctioned plan, commencement certificate bearing No. VVCMC/TP/CC/VP-6319/295/2021-22 dated 8.10.2021 as well as revised building permission, sanctioned plan, commencement certificate bearing No. VVCMC/TP/CC/VP-6319/668/2022-23 dated 31.03.2023, occupation certificate and further certificates issued from time to time by Respondent No. 1 in favour of Respondent No. 2 for proposed hospital building on land bearing Survey No. 294A, Hissa No. 3, 7, 9 of Village Virar, Taluka Vasai, District Palghar.”

12. Having regard to these circumstances, we do not believe that there is merit in the Petition. It is rejected. In the facts and circumstances of the case there will be no order as to costs.

13. We clarify however that the civil suit will proceed on merits unaffected and uninfluenced by any observations in this order.

(Kamal Khata, J)

(G. S. Patel, J)