

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13483 OF 2022

Pandharinath Haribhau Kashid & Ors ...Petitioners
Versus
State of Maharashtra & Ors ...Respondents

Mr YS Jahagirdar, Senior Advocate, i/b Prashant Kulkarni, for the
Petitioner.

Mrs MP Thakur, AGP, for the Respondent-State.

Ms Aparna Vhatkar, for Respondent No. 2.

Mr Deepak More, with SA Gawade, for Respondent Nos. 3 & 4.

CORAM G.S. Patel &
Kamal Khata, JJ.

DATED: 6th November 2023

PC:-

1. This is a curious case where three instrumentalities of the State all seem to be asking for reliefs against each other. The 1st Respondent is the State of Maharashtra in the Urban Development Department and through the Secretary of the Irrigation Department. The 2nd Respondent is the Executive Engineer of the Pune Irrigation Department. The 3rd Respondent is the Pimpri Chinchwad Municipal Corporation (“PCMC”) and the 4th Respondent is also a division of the Pimpri Chinchwad Municipal

Corporation. The 5th Respondent has been added by an amendment separately as the Principal Secretary of the Irrigation Department.

2. In our order dated 9th October 2023 we set out the prayers and outlined the issues involved. Paragraphs 2 to 6 of that order read thus:

“2. The Petition has been amended. The prayer clauses (a), (aa), (b) and (c) of the Petition read thus:

“(a) that this Hon’ble Court be pleased to issue any appropriate writ, order or direction in the like nature of Article 226 of the Constitution of India to carry out the **Government Information System Survey** of the Petitioner’s land situated at Pimple Gurav and Wakad to fix the new flood line as per existing flood situations and recent road developments in the Pimpri Chinchwad area.,

(aa) that this Hon’ble Court be pleased to issue any appropriate writ, order or direction in the like nature of Article 226 of the Constitution of India to direct the Respondent No. 5 carry out the **Government Information System Survey** of the Petitioner’s land situated at Pimple Gurav and Wakad to fix the new flood line as per existing flood situations in the Pimpri Chinchwad area in the limits of the Pimpri Chinchwad Municipal Corporation;

(b) In alternate this Hon’ble Court may be pleased to issue appropriate Writ and/or direction and/or order under Article 226 of the constitution of India, to direct the

Respondent No. 3 & 4 to issue guidelines for Development Permissions in the flood lines situated in the Pimpri Chinchwad area,

(c) That this Hon'ble Court be pleased to issue a writ of mandamus or any other writ, order or direction in the nature of mandamus directing Respondent Nos. 1 to 4 forthwith grant permission to the Petitioners to develop their property.”

3. At this stage we are not concerned with prayer clause (c) which is directed, obviously, to the much narrower requirements or demands of the Petitioners but prayer clauses (a) and (aa) seem to us to be independently necessary, irrespective of whether the Petitioners are able to establish a case that they are to be granted permissions or not. The delineation of the flood lines around the Pawna, Mula and Indrayani rivers is absolutely essential. This has to be done by the Irrigation Department. There is no question of expecting the Municipal Corporation to do it.

4. In fact, the Municipal Corporation itself will need the demarcation of the flood lines so that it has a clear idea of where it can and cannot grant permission. Recent experience of unauthorised constructions and of wrongly granted permissions in the flood plain areas of rivers, not only in the Kolhapur region but also in the National Capital Region, suggest that the management of the riverine flood plains is an essential component of town and country planning. Under the provisions of the Maharashtra Regional Town Planning Act, 1966, any concept of balance development and the requirements of a development plan or a regional plan demand that these lines be clearly demarcated. A planning authority such as the Pimpri Chinchwad Municipal Corporation (or, for that matter any other Municipal Corporation) can only then know with

certainty what permissions can legitimately be granted. More importantly, a Municipal Corporation then can be held to account to ensure that unauthorised construction in prohibited areas, i.e., on the wrong side of a demarcated flood line are never allowed to come up and are brought down at the earliest possible.

5. The failure to do this systematically has had known consequences in the immediately recent past as we have seen with the floods in Kolhapur just two years ago.

6. We require from the 2nd Respondent, on an urgent basis, a schedule setting out when the demarcation exercise will be completed in all respects. For that purpose, every component, stage must be identified including conducting of necessary surveys, satellite mapping etc. We expect to see on Affidavits the designation of a Nodal Officer to supervise this and some description of the methodology that is proposed along the coasts of these three rivers. That Affidavit is to be filed and served by 23rd October 2023.”

3. We have now seen the Affidavits of the PCMC from page 99, the Affidavit of one Digambar Mahadev Dubal on behalf of the Pune Irrigation Division and, given to us today, the Affidavit of one Sonal Anand Gaikwad, Executive Engineer and Under Secretary to the Government in the Water Resources Department.

4. The Irrigation Department tells us that it has completed the work of demarcating the blue and red flood lines for the three rivers in question, namely, the Purna river, the Mula river and the Indrayani river. It says in its Affidavit that what is required is “the sanction” of the State Government’s Water Resources Department.

The Affidavit of Ms Gaikwad on behalf of the Water Resources Department in paragraphs 5 and 6 at page 120 says this:

“5. Regarding methodology of demarcation of Flood Lines, I say and submit that, the demarcation of Pawna, Mula and Indrayani and other rivers is completed by the Water Resources Department with due procedures & technical guidelines prevailed during the time. For flood estimation, 25 years of flood data is taken into account for Blue Line and 100 years data for Red Line. For flood estimation, HEC-RAS software was used and for survey purpose D.G.P.S. (Differential Global Positioning System) was used. Field demarcation was then processed after approval of concerned Chief Engineer as per Government Resolution dated 2.3.2015 of Water Resource Department. Hereto annexed and marked as **Exhibit-B** is the copy of G.R. dated 2.3.2015.

6. I say and submit with full humbleness that there is no such provision in prevailing rules and policies of Government for revising the Flood Lines. Flood Lines marking is a highly technical matter involving many parameters like cross-section of river, slope of river, silt/debris accumulation along river length, existing structures along river length, rainfall pattern over the past years etc. The marking of Flood Lines are done/have been done scientifically & systematically considering appropriately the above parameters. Considering these averments, it may be appreciated that the Flood Line marking is a very time-consuming & costly affair.”

5. The PCMC is clearly unhappy with this stand. The two Affidavits tell us that the flood lines have in fact been demarcated. But what the PCMC says at page 102 is that while it is involved in the process of revising a development plan as required by the

Maharashtra Regional Town Planning Act, 1966 (“**MRTP Act**”) it needs to plot the flood lines both red and blue and therefore the PCMC wants these flood lines to be superimposed on its plans.

6. This is not the scope of the Petition at all. It is a matter between the Planning Authority, namely the PCMC, and the sanctioning authority viz. the State Government. We are not going to issue directions to one authority to superimpose its mapped flood lines on another authority’s draft development plans. It is for these agencies to coordinate this activity amongst themselves.

7. But we have been repeatedly told that the PCMC is going to encounter difficulties because it apprehends that some of its civic work and public civil engineering particularly such as BRTS lanes in the Pimpri Chinchwad Municipal area, will be adversely affected by the demarcation of one or more of these flood lines.

8. That is not our concern, and it is certainly not the ambit of the Petition. The Petitioners are individuals who seek development permission from the PCMC. If these permissions can be granted in accordance with law, keeping all relevant factors in mind including the flood lines as demarcated by the Irrigation Department and confirmed to have been so demarcated by the Water Resources Department, as also what is stated on affidavit, then that is a decision for the PCMC to take.

9. As it happens, Mr Jahagirdar’s clients, the Petitioners, have received no rejection of their proposal nor an acceptance. They

seem to have been told that their application cannot be processed until the PCMC gets this superimposition of flood lines on its development plans. This is hardly an answer to give to any property owner who is seeking development permission.

10. Having regard to what is stated in the two Affidavits filed by the Irrigation Department and the Water Resources Department, the PCMC is directed to process the Petitioners' application for development permission in accordance with law and keeping all relevant factors in mind, including the statements on affidavit and to do so at the earliest.

11. As far as Petitioner No 1 is concerned, there is an order at page 89 saying that the proposed development is in the prohibited zone. The reason given is that some portions of the property are in the blue line of the Pawna river. This communication is of 16th March 2021 and is at Exhibit 'M' at page 89. Unfortunately, in the Petition this rejection is not challenged at all even though the prayers had been amended. What seems to have been attempted instead is to seek a direction to demarcate the blue line.

12. We leave all remedies of the 1st Petitioner in regard to the rejection of 16th March 2021 open including in appeal. We have expressed no view on the merits of that application or the grounds for rejection including what is stated in the two Affidavits filed before us. It is equally open to the 1st Petitioner to file a fresh application. No further directions are either required or even possible.

13. The Petition is disposed of in these terms. There will be no orders as to costs.

(Kamal Khata, J)

(G. S. Patel, J)