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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.15198 OF 2022

Xrbia Developers Limited,
through its Authorized Signatory -
Sanjay M. Shinde

...Petitioner

V/s.

The Collector, Raigad & Ors.

...Respondents

Mr.G.S. Godbole, Senior Advocate i/b Mr.Devashish Godbole for the
Petitioner.

Mr.A.I. Patel, Addl. G.P. with Mrs.M.S. Bane, AGP for the State –
Respondent Nos.1 and 2.

Mr.Vishal Patil for the Respondent No.4.

CORAM : R.D. DHANUKA &
M.M. SATHAYE, JJ.
DATE : 2ND MARCH, 2023.

P.C. :-

1. Mr.Patil, learned counsel for the Respondent No.4 states that the Respondent No.3, who was the father of the Respondent No.4, has already expired. In that view of the matter, Mr.Godbole, learned Senior Counsel for the Petitioner seeks leave to delete the name of the Respondent No.3. Leave granted. The amendment shall be carried out during the course of the day. Re-verification is dispensed with.

2. Rule. Mr.Patel, learned Additional Government Pleader waives service for the Respondent Nos.1 and 2. Mr.Patil waives service for Respondent No.4. Rule is made returnable forthwith. By consent of parties, the matter is heard finally.

3. By this Petition under Article 226 of the Constitution of India, the Petitioner is seeking directions to the Respondent No.1 - Collector, Raigad to forthwith withdraw and/or cancel the impugned order / communication dated 27th October, 2022, which is recorded in the Roznama in respect of the complaint filed by the Respondent No.4 and further direction to Respondent No.3 – concerned Tahsildar (Revenue) to withdraw or cancel the impugned order / letters dated 28th October, 2022 and 2nd November, 2022. The Petitioner further seeks a writ of certiorari for quashing and setting aside the aforesaid impugned orders / communications.

4. Mr.Godbole, learned Senior Advocate for the Petitioner has invited our attention to the first impugned order dated 27th October, 2022, which is an order passed by the Collector, Raigad in the Roznama sheet, by which, pending the complaint filed by the Respondent No.4, the Petitioner is directed not to create any third

party rights and interest in respect of the development on the subject matter land. He further invited our attention to aforesaid subsequent orders issued by the Tahsildar (Revenue) directing the Petitioner not to carry out any further construction on the subject matter land.

5. It is submitted on behalf of the Petitioner that though the Collector had issued the directions not to create any third party rights and interest only, the Tahsildar has directed the Petitioner not to carry out any further construction, without there being any such direction by the Collector in the first place. It is further contended that apparently when the copy of the Roznama dated 27th October, 2022 annexed by the Petitioner to the Petition was taken, additional endorsement of the Collector directing not to carry out further construction was missing. He further submitted that the Collector has no power or jurisdiction to issue such orders in the nature of injunction not to create third party rights or not to carry out further construction, under the provisions of the Maharashtra Land Revenue Code.

6. Mr. Patel, learned AGP for the Respondent Nos.1 and 2 has filed affidavit in reply affirmed on 28th February, 2023 by Tahsildar (Revenue) (Respondent No.2). A perusal of the said affidavit in reply shows that the reasons and considerations submitted to defend the

impugned Order/communication of the State, are not part of the impugned order/communication and reasons are sought to be advanced first time by way of an affidavit in reply.

7. We have perused the copy of Roznama dated 27th October, 2022 produced by the Petitioner as well as copy of same the Roznama dated 27th October, 2022 produced by the Respondent Nos.1 and 2. Admittedly, it appears that after the Petitioner was called upon to sign on the Roznama to mark his presence on the date of hearing, time endorsement of the order viz. "3:30" and subsequent endorsement "not to construct further" seems to have been added.

10. At this stage, we do not propose to comment anything about the jurisdiction of the Collector to pass interim orders or whether there is any merit in the complaint filed by the Respondent No.4, at whose instance, this inquiry is initiated as well as interim orders are passed by the Respondent Nos.1 and 2.

11. Record shows that the Respondent No.1 itself had granted permission to the Petitioner for development under original permission dated 30th October, 2014, which is revised from time to time. Now on complaint filed by the Respondent No.4, same

authority, without completing the inquiry, has issued an interim order stopping creation of third party interest as well as further construction on the subject matter land.

12. We therefore find it appropriate to direct the Respondent No.1 i.e. Collector, Raigad to conduct an inquiry after hearing the Petitioner as well as the Respondent No.4 and pass an order in accordance with law within a time bound manner. However, during pendency of such hearing, in view of the original permission granted, the impugned order granting interim injunction not to create third party rights and not to construct further, cannot be sustained.

13. Hence, we pass the following order :

a). The impugned orders dated 27th October, 2022 passed by the Respondent No.1 and the communications / orders dated 28th October, 2022 and 2nd November, 2022 of the Tahsildar (Revenue) are quashed and set aside. However, it is clarified that if the Petitioner constructs or carries out any further construction hereinafter, the Petitioner will not claim any equity about the said future construction.

b). The Petitioner and the Respondent No.4 are directed to

appear before the Respondent No.1, Collector, Raigad on 13th March, 2023 at 11:00 a.m. The Respondent No.1 is directed to hear the Petitioner and the Respondent No.4 and consider the documents that may be produced in support of their rival claims and pass an appropriate Order in accordance with law, without being influenced by the impugned orders and communications, within 4 weeks from 13th March 2023.

c). It is made clear that this Court has not expressed any opinion on the merits of the claim of the Respondent No.4 as well as the Petitioner. All contentions of the parties, including the Petitioner's contention about the jurisdiction of the Collector, are expressly kept open.

d) The order that would be passed by the Respondent No.1 along with reasons, would be communicated to the Petitioner within one week from the date of decision. It is clarified that if the order that would be passed by the Respondent No.1 is adverse against the Petitioner, such order will not be given effect to for a period of three weeks from the date of communication of the order..

e). The Writ Petition is disposed off and the Rule is made

absolute in aforesaid terms. No order as to costs.

f) All concerned parties to act on the authenticated copy of this order.

(M.M. SATHAYE , J.)

(R.D. DHANUKA, J.)