

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2627 OF 2023
IN
WRIT PETITION NO. 3274 OF 2012

Sumitra Developers	...Applicant
<i>In the matter between</i>	
Prashant Prakash Tetambe	...Petitioner
<i>Versus</i>	
The State of Maharashtra & Ors	...Respondents

Mr Sachin S Punde, *for the Applicant/Respondent.*
Mr Bhavesh Parmar, *with Vivekanand Akshali & Rajesh Sahani, i/b*
Deymani Shukla, for the Petitioner.
Mrs MP Thakur, AGP, *for Respondents Nos. 1, 3 & 4-State.*
Mr Anil Bagwe, *for Respondent No. 2.*

CORAM M.S. Sonak &
Kamal Khata, JJ.
DATED: 31st July 2024

PC:-

1. Heard learned Counsel for the parties.

2. On 19th July 2024, we made the following order:

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GAJAKOSH
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signed by
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Date:
2024.08.03
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“1. By this Interim Application, the original Respondent No. 5 seeks the following reliefs:

“A] This Honourable High Court be pleased to permit Applicant to carry out additional construction after seeking revised permission from Respondent No. 2 under UDCPR.

B] Or in the alternative this Honourable High Court be pleased to expedite the hearing of the Writ Petition No. 3274 of 2012 thereby peremptorily fixing the early date for final hearing.”

2. Regarding prayer clause (B), we accept such prayer and post the Petition for final hearing on 12th September 2024 at 2:30 pm, subject to overnight part-heard matters.

3. Insofar as prayer clause (A) is concerned, now that we have posted the matter for final hearing at an early date, we do not think such interim relief can be granted at this stage. Besides, learned counsel for the original Petitioner points out that this Court, on 4th May 2012, directed the Respondents to maintain the status quo as of today with regard to the subject matter of this Petition. He points out that this order was confirmed on 30th July 2024.

4. Learned counsel for the Petitioner points out that the present Applicant challenged this order before the Hon’ble Supreme Court. This Appeal was partly allowed in the sense that the present Applicant was allowed to occupy the constructions that were already completed. However, the restraint on further constructions was maintained.

5. *Considering all these aspects, no case is made to grant relief in terms of prayer clause (A), particularly now that we have posted the matter for a final hearing on 12th September 2024 at 2.30 pm. Interim Application No. 2627 of 2023 is partly allowed and disposed of.*

6. *The Interim Application is disposed of.*

WRIT PETITION NO. 3274 OF 2012

7. *In the accompanying Interim Application, we had directed this Petition should be placed for final hearing on 12th September 2024 at 2.30 pm. subject to overnight part heard matters. However, learned counsel for the 5th Respondent submits that the challenge in the main Petition may have become academic by now. He explains that now a new regime, UDCPR 2020, has intervened. However, he submits that he will obtain instructions and request that the matter be posted for directions on 30th July 2024. Accordingly, we post this matter on 30th July 2024 for directions.*

8. *Learned counsel for the Petitioner and 5th Respondent should consider whether the reliefs in this Petition have indeed become academic.”*

3. Today, on instructions, Mr Punde, learned Counsel for the 5th Respondent, states that the 5th Respondent will, within four weeks from today, apply for revised building permission-based inter alia on the new regime Unified Development Control and Promotion Regulations (“UDCPR”) 2020. He submits that this, the main relief in this Writ Petition, would be rendered academic

because the 5th Respondent will then not rely upon the earlier permission, which is impugned in this Petition.

4. Mr Parmar, learned Counsel for the Petitioner, submits that since the 5th Respondent proposes to apply for a revised permission, the issue of whether the original permission was valid or not survives. He submits that a revised permission can be issued only in respect of a permission that is initially valid and not invalid. He refers to this Court's order dated 30 July 2014 and the observations therein.

5. In particular, Mr Parmar refers to the observations in paragraph 3 of our order dated 30 July 2014 regarding prima facie interpolation and tampering with some documents. He submits that all these matters are relevant, and in that sense, the reliefs in this Petition have not become academic.

6. We have considered the rival contentions and perused the material on record. Similarly, we have also perused our order dated 30 July 2014, by which Rule was granted in this Petition, and the ad-interim granted earlier was directed to operate until the disposal of this Petition.

7. Now that the 5th Respondent is applying for revised permission within four weeks, we propose to dispose of this Petition by directing Chiplun Municipal Council (Respondent No. 2) to dispose of such application in accordance with law and on its own merits. However, the Petitioner's contention above the original

permission being invalid, inter alia on the grounds of tampering and interpolation, or any other objections are specifically kept open, and the same will have to be considered by the Chiplun Municipal Council. For this, the Chiplun Municipal Council must hear the Petitioner and the 5th Respondent and only then decide the 5th Respondent's application for revised permissions. All contentions are, therefore, kept open even though we are disposing of this petition.

8. The Chiplun Municipal Council will have to pass a reasoned order and communicate it to the parties within three months of the 5th Respondent filing such an application seeking revision of plans.

9. Until the Chiplun Municipal Council decides on the 5th Respondent's application for plan revision, the interim order granted in this Petition will operate. Should the Chiplun Municipal Council decide to permit the 5th Respondent to revise the plans, the interim order made by this Court will still operate for four weeks from the date of communication of this decision to the Petitioner. If no interim relief is obtained in the meantime, the 5th Respondent can proceed with the construction based on the revised plans. But if the application for revised plans is denied, there is no question of the 5th Respondent falling back on the impugned permission or the plans and attempting any constructions.

10. If any of the parties are aggrieved by the Council's decision, they shall have the liberty to challenge it in accordance with the law. The Petitioner, in particular, will have the liberty to raise all the

grounds raised in the present Petition in the event of such a challenge. So also, the 5th Respondent would have the liberty to raise the defences in this petition.

11. Though this Petition is being disposed of, the directions in paragraph 9 of our order dated 30 July 2014 shall continue to operate. This means that both documents referred to in paragraph 9 shall continue to be kept in a sealed envelope in the custody of the Registrar (Judicial-I) until further orders. Liberty is granted to the parties to apply for this limited purpose.

12. The rule in this Petition is disposed of in the above terms. There shall be no order for costs.

(Kamal Khata, J)

(M.S. Sonak, J)