

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1860 OF 2023

Anil Parshuram Gurav and Ors.

.. Petitioners

Versus

Municipal Corporation of City of Vasai-Virar and
Ors.

.. Respondents

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- Mr. Vijay Kurlle, Advocate for Petitioners.
- Mr. Vishwanth Patil, Advocate for Respondent No.1.
- Ms. Bhagyasha Kurane i./by Ms. Arpana Bhosale, Advocate for Respondent No.2.
- Ms. Neeta P. Karnik, Advocate for Respondent No.3.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 24, 2024

P.C.:

1. Heard Mr. Kurlle, learned Advocate for Petitioners, Mr. Patil, learned Advocate for Respondent No.1, Ms. Kurane, learned Advocate for Respondent No.2 and Ms. Karnik, learned Advocate for Respondent No.3.

2. This Court has heard the present Writ Petition at length on 13.03.2024, 20.03.2024 and 08.04.2024 pursuant to which compliance has been effected by the Writ Petitioners as also the Respondent No.1 – Corporation by placing on record appropriate record.

3. Though the Writ Petition is filed in a representative capacity by four Petitioners claiming to be representatives of all structure

occupants, I do not recognize the four Writ Petitioners as being representatives of all structure owners. This *modus operandi* of a few structure owners representing the others is not appreciated by this Court since the issue involved in the present case pertains to challenge to final notice issued by the Corporation to 50 structures, 38 residential and 12 commercial unit holders pursuant to substantive action having been taken in compliance of the Division Bench order dated 03.12.2015 passed in Public Interest Litigation.

4. This Court is refraining from expressing its opinion on the legality of the structures. This is so because, *prima facie*, it is seen that every Government Authority much less the Planning Authority which is Respondent No.1 – Corporation, before it evicts, rather forcibly evicts any occupant from its structure which has been occupied by the occupant since long for demolition of the structure needs to follow the due process of law and hear the incumbent occupant and pass a reasoned order.

5. It is seen that the present Writ Petition is filed with clear reference to 50 structure holders / occupants who were issued final notice by the Respondent No.1 – Corporation. In this context, if the number of structures have now increased, this Court does not take cognizance of the same at all nor does it recognize any additional structures.

6. In that view of the matter, Respondent No.1 – Corporation was directed by this Court not by one but two orders to place on record details of structures and the final notice issued to those structure holders due to which the Writ Petitioners approached the Civil Court and filed the suit seeking injunction.

7. Mr. Patil appearing on behalf of Respondent No.1 – Corporation has placed before Court the detailed list of notices issued to the 50 structure holders pursuant to the Division Bench order in Public Interest Litigation proceedings. This detailed list is taken on record and marked “X” for identification. For the sake of convenience and reference, the said list is scanned and reproduced below so as to enable all parties to ensure that the exercise of hearing contemplated by the present order shall apply only to these structures and to no other additional structures at all.

Sl. No.	Structure No.	Structure Name	Structure Address	Structure Holder Name	Structure Holder Address	Structure Holder Phone No.	Structure Holder Email Id.	Structure Holder Signature	Structure Holder Stamp	Structure Holder Date	Structure Holder Time	Structure Holder Location	Structure Holder Status	Structure Holder Remarks
1	10000000000000000000	Structure 1	Structure Address 1	Structure Holder Name 1	Structure Holder Address 1	Structure Holder Phone No. 1	Structure Holder Email Id. 1	Structure Holder Signature 1	Structure Holder Stamp 1	Structure Holder Date 1	Structure Holder Time 1	Structure Holder Location 1	Structure Holder Status 1	Structure Holder Remarks 1
2	10000000000000000000	Structure 2	Structure Address 2	Structure Holder Name 2	Structure Holder Address 2	Structure Holder Phone No. 2	Structure Holder Email Id. 2	Structure Holder Signature 2	Structure Holder Stamp 2	Structure Holder Date 2	Structure Holder Time 2	Structure Holder Location 2	Structure Holder Status 2	Structure Holder Remarks 2
3	10000000000000000000	Structure 3	Structure Address 3	Structure Holder Name 3	Structure Holder Address 3	Structure Holder Phone No. 3	Structure Holder Email Id. 3	Structure Holder Signature 3	Structure Holder Stamp 3	Structure Holder Date 3	Structure Holder Time 3	Structure Holder Location 3	Structure Holder Status 3	Structure Holder Remarks 3
4	10000000000000000000	Structure 4	Structure Address 4	Structure Holder Name 4	Structure Holder Address 4	Structure Holder Phone No. 4	Structure Holder Email Id. 4	Structure Holder Signature 4	Structure Holder Stamp 4	Structure Holder Date 4	Structure Holder Time 4	Structure Holder Location 4	Structure Holder Status 4	Structure Holder Remarks 4
5	10000000000000000000	Structure 5	Structure Address 5	Structure Holder Name 5	Structure Holder Address 5	Structure Holder Phone No. 5	Structure Holder Email Id. 5	Structure Holder Signature 5	Structure Holder Stamp 5	Structure Holder Date 5	Structure Holder Time 5	Structure Holder Location 5	Structure Holder Status 5	Structure Holder Remarks 5
6	10000000000000000000	Structure 6	Structure Address 6	Structure Holder Name 6	Structure Holder Address 6	Structure Holder Phone No. 6	Structure Holder Email Id. 6	Structure Holder Signature 6	Structure Holder Stamp 6	Structure Holder Date 6	Structure Holder Time 6	Structure Holder Location 6	Structure Holder Status 6	Structure Holder Remarks 6
7	10000000000000000000	Structure 7	Structure Address 7	Structure Holder Name 7	Structure Holder Address 7	Structure Holder Phone No. 7	Structure Holder Email Id. 7	Structure Holder Signature 7	Structure Holder Stamp 7	Structure Holder Date 7	Structure Holder Time 7	Structure Holder Location 7	Structure Holder Status 7	Structure Holder Remarks 7
8	10000000000000000000	Structure 8	Structure Address 8	Structure Holder Name 8	Structure Holder Address 8	Structure Holder Phone No. 8	Structure Holder Email Id. 8	Structure Holder Signature 8	Structure Holder Stamp 8	Structure Holder Date 8	Structure Holder Time 8	Structure Holder Location 8	Structure Holder Status 8	Structure Holder Remarks 8
9	10000000000000000000	Structure 9	Structure Address 9	Structure Holder Name 9	Structure Holder Address 9	Structure Holder Phone No. 9	Structure Holder Email Id. 9	Structure Holder Signature 9	Structure Holder Stamp 9	Structure Holder Date 9	Structure Holder Time 9	Structure Holder Location 9	Structure Holder Status 9	Structure Holder Remarks 9
10	10000000000000000000	Structure 10	Structure Address 10	Structure Holder Name 10	Structure Holder Address 10	Structure Holder Phone No. 10	Structure Holder Email Id. 10	Structure Holder Signature 10	Structure Holder Stamp 10	Structure Holder Date 10	Structure Holder Time 10	Structure Holder Location 10	Structure Holder Status 10	Structure Holder Remarks 10

[illegible][illegible]

8. The above list is prepared from the record of the Corporation by Mrs. Manali Shinde, Asstt. Municipal Commissioner, Ward (G), Vasai Virar City Municipal Corporation on behalf of Respondent No.1 – Corporation. She is the authorized Officer of the Corporation.

9. It is seen that originally 50 notices were issued to 50 structures; 38 residential unit holders + 12 commercial unit holders. Respondent No.1 – Corporation has incidentally in column No.5 of the above list also appended the name of the current occupant of the structure. This is in view of the reason that the list of the noticees in column No.2 if seen, most of the notices have been issued to Mr. Rampyare Sukhu Yadav, who is Respondent No.2 i.e. the Developer and the person who has constructed the said structures.

10. Mr. Kurle would supplement that said Respondent No.2 – Developer has purchased the land from Respondent No.3 who is the land owner represented by Ms. Karnik.

11. Ms. Karnik would submit that the transaction between the Defendant Nos.2 and 3 subsequently stood cancelled and a substantive suit is pending in the Civil Court between them. Be that as it may, the question before the Court is with respect to eviction of the subject 50 structures / units in respect of which final notice was issued by Respondent No.1 – Corporation which ultimately led to filing of the

Civil Suit by the Writ Petitioners.

12. In the suit filed before the City Civil Court, the final notices are challenged. Submissions made by Mr. Kurle incidentally have been captured in the earlier orders referred to and alluded to herein above.

13. Be that as it may, this Court is of the clear opinion that the structure occupiers cannot be evicted by summary action by issuing a final notice of eviction to them and asking them to vacate for carrying out demolition. Hence the exercise of placing before the Court details of notices to the structure occupants was directed to be carried out which has been adequately complied with by the Corporation. This Court therefore directs that the said final notice which has been received by the structure occupants including the Petitioners shall now be treated as individual show cause notice in respect of each structure. The 50 structure occupants are directed by this Court to file their say to the final notice alongwith all such documentary evidence at their disposal to show their authorized nexus with the structures to prevent eviction and demolition of their structures.

14. It is directed that each of the structure occupants shall file their respective and independent say to the final notice which shall be received separately by the Corporation. The practice of these structure occupants filing composite reply is deprecated by this Court.

The facts and circumstances governing each structure occupant *qua* his occupation shall be different and in that view of the matter, the structure occupants are directed to file their response in writing to the said individual notices pertaining to their respective structure to prove their authorized occupation in accordance with law.

15. Municipal Corporation shall receive the reply from either the structure occupant or the noticee alongwith all necessary documentary evidence within a period of eight weeks from today.

16. Needless to state that all concerned parties and occupants, namely Respondent Nos.2 and 3 shall also be entitled to be heard by the Corporation while determining the case of each structure occupant for eviction and demolition under the final notice of eviction and demolition which have been issued to the structure occupants by the Corporation pursuant to the Division Bench's order passed in Public Interest Litigation in the year 2015.

17. Respondent Nos.2 and 3 i.e. owner and developer shall also be entitled to file their Affidavit-in-Reply in the said final hearing. Notice of hearing to be effected by Corporation for each structure occupant. All such Affidavit-in-Replies by the structure occupants and / or Respondent Nos.2 and 3 shall be filed within eight weeks. Thereafter the Respondent – Corporation is directed to give a personal hearing to each structure occupant within a period of eight

weeks thereafter including the Respondent Nos.2 and 3 and only after hearing all concerned parties pass a reasoned speaking order for eviction and demolition of the structures, if it may so require to be passed in the facts and circumstances of the present case and strictly in accordance with law.

18. The aforesaid exercise shall be carried out scrupulously by the Corporation so that principles of natural justice are not transgressed while following the due process of law. In view of this order, the Civil Suit filed by the Petitioners in a representative capacity on behalf of all structure occupants is disposed. Mr. Kurle agrees for the same. Copy of this order shall be placed before the Trial Court for information and compliance.

19. Needless to state that liberty to apply is granted to the parties. This order shall be read alongwith the orders dated 13.03.2024, 20.03.2024 and 08.04.2024 together.

20. With the above directions, Writ Petition is allowed and disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

Digitally signed
by HARSHADA
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