

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3534 OF 2024

SHRADDHA
KAMLESH
TALEKAR

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1. Ankush Ika Pandhare,
Age : 45 years, Occu. : Agriculture,
R/o. Dohole, Padgha, Bhiwandi,
Thane – 421 101

2. Suresh Kashinath Waghe,
Age :....., Occu.: Agriculture,
R/o. S./o. Kashinath Waghe,
Bhavghar, Thane, Shere,
Maharashtra – 421 301

...Petitioners

Versus

1. The Secretary,
Department of Revenue, Mantralaya,
Mumbai -400 032.

2. The Collector, Thane
District Thane

3. The Sub-Divisional Officer,
Kalyan, Dist. Thane

4. The Tahsildar,
Kalyan, Dist. Thane

...Respondents

Mr.Amit Sale, Advocate for Petitioners.

Ms.Dhruti Kapadia, AGP for Respondent Nos.1 to 4-State.

CORAM : B. P. COLABAWALLA &

SOMASEKHAR SUNDARESAN, JJ.

DATE : MARCH 22, 2024

P.C.

1. The above Writ Petition is filed seeking the following relief :

(B) The Hon'ble Court be pleased to quash and set aside the order dated 29/12/2023, passed by the respondent No.2 Collector and further the show-cause notice dated 8/2/2024 issued by the respondent No.4.

2. The order impugned is passed by Respondent No.2-the Collector, Thane under which the Petitioners have been asked to remove the construction that they have carried out on the Suit Land at their own expense or else the said construction would be removed by the Respondents. Since the construction was not removed, the Show Cause Notice dated 8th February 2024 was issued.

3. It is the case of the Petitioners that Petitioner No.1 as well as Petitioner No.2 belong to a Scheduled Tribe and hold Adivasi land at Village Nagaon, Taluka- Kalyan, Dist. Thane. Petitioner No.1 holds agricultural land bearing Survey No.11/9 whereas Petitioner No.2 holds agricultural land bearing Survey No.11/10 at Village Nagaon, Tal. Kalyan, Dist. Thane (collectively referred as “*the suit lands*”).

4. It is the specific case of the Petitioners that due to financial constraints and poverty, and also because the suit lands are non-fertile having no option of cultivation, in the year 2018, the Petitioners constructed a few rooms on the suit lands and rented them out for their livelihood. It is the further case of the Petitioners that in the year 2020, the Petitioners were informed about the illegality committed by them of carrying out the aforesaid construction by the office of Respondent No.4. Accordingly, the Petitioners, by their letter dated 18th December 2020, informed Respondent No.4 that the suit lands were non-fertile, and therefore, they are not able to get agricultural produce out of it and earn their livelihood. It is for the purpose of their livelihood that they constructed temporary sheds on the suit lands and have let them out to third parties. Accordingly, a request was made to Respondent No.4 not to take action in respect of the construction raised by them.

5. It is the case of the Petitioners that after this letter, no explanations were sought from the Petitioners but the order of removal of the unauthorized construction from the suit lands was passed on 23rd March 2021 by [Respondent No.3] by invoking the

provisions of Section 59 of the Maharashtra Land Revenue Code, 1966 (“MLRC, 1966”). It is the case of the Petitioners that the Petitioners were never served with any such order but only received a notice on 9th November 2021, and which was without incorporating the names of the Petitioners. Since according to the Petitioners, there was a violation of the principles of natural justice, the Petitioners filed Writ Petition No.7942 of 2021 and sought quashing and setting aside of the notice dated 9th November 2021. That Writ Petition was disposed of on 24th November 2021 directing Respondent No.2-The Collector, Thane to give a hearing to the Petitioners, and thereafter, pass a speaking order. It was further directed in the event the order being adverse to the Petitioners, the same shall not be implemented upto 15th December 2021. It appears that the Collector, Thane has thereafter given a hearing to the Petitioners and passed the impugned order. By the impugned order, The Collector has, as mentioned earlier, *inter-alia* directed the Petitioners to remove their illegal construction and confirmed the earlier order passed by Respondent No.3.

6. We have perused the Writ Petition and also heard Mr.Sale, the learned Advocate appearing on behalf of the Petitioners, as well as the learned AGP for the State. It is not in dispute before us that the construction that has been put up by the Petitioners is without seeking any permission of any authority. However, Mr.Sale sought to justify this action by relying upon Section 41(1) of the MLRC, 1966 which permits erection/construction a farm building, wells or tanks, or make any other improvements thereon for the better cultivation of the land. Mr.Sale submitted that permission is required for construction only in the situations as set out in Section 41(2) of the MLRC, 1966. According to Mr.Sale, the suit lands do not fall within any of the categories as mentioned in Section 41(2), and therefore, no permission was necessary or required. This is the short and only point on which Mr.Sale assails the order passed by Respondent No.2-Collector.

7. After hearing Mr. Sale and perusing the statutory provisions, we find absolutely no merit in the aforesaid contention. Section 41 of the MLRC, 1966, for the sake of convenience, is reproduced hereunder :

Section 41 – Uses to which holder of land for purposes of agriculture may put his land

[(1) [Subject to the provisions of this Section, holder of any land] assessed or held for the purpose of agriculture is entitled by himself, his servants, tenants, agents or other legal representatives to erect farm [building], construct wells or tanks or make any other improvements thereon for the better cultivation of the land, or its more convenient use for the purpose aforesaid.

[(2) From the date of commencement of the Maharashtra Land Revenue Code (Amendment) Act, 1986, (hereinafter in this section referred to as "such commencement date") before erection of any farm building or carrying out any work of renewal of, re-construction of, alterations in, or additions to, any such farm building, or any farm building erected before such commencement date, on any land which is situated,

(a) within the limits of-

(i) the Municipal Corporation of Greater Bombay,

(ii) the Corporation of the City of Pune,

(iii) the Corporation of the City of Nagpur,

and the area within eight kilometres from the periphery of the limits of each of these Corporations;

(b) within the limits of any other municipal corporation constituted under any law for the time being in force and the area within five kilometres from the periphery of the limits of each such municipal corporation;

(c) within the limits of "A" Class municipal councils and the area within three kilometres from the periphery of the limits of each such municipal council;

(d) within the limits of the 'B' and 'C' Class municipal, councils; or

(e) within the area covered by the Regional Plan, town planning scheme, or proposals for the development of land (within the notified area) or (an area designated as) the site of the new town, whether each of these being in draft or final, prepared, sanctioned or approved under the Maharashtra Regional and Town Planning Act, 1966;

the holder or any other person referred to in sub-section (1), as the case may be, shall, notwithstanding anything contained in sub-clauses (d) and (e) of clause (14) of Section 2, make an application, in the prescribed form, to the Collector for permission to erect such farm building or to carry out any such work of renewal, re-construction, alteration or additions as aforesaid.

(3) The Collector may, subject to the provisions of sub-section (4) and such terms and conditions as may be prescribed, grant such permission for erection of one or more farm buildings having a plinth area not exceeding the limits specified below :-

(i) if the area of the agricultural holding on which one or more farm buildings are proposed to be erected exceeds 0.4 hectare but does not exceed 0.6 hectare, the plinth area of all such buildings shall not exceed 150 square metres; and

(ii) if the area of the agricultural holding on which one or more farm buildings are proposed to be erected is more than 0.6 hectare, the plinth area of all such buildings shall not exceed one-fortieth area of that agricultural holding or 400 square metres, whichever is less :

Provided that, *if one or more farm buildings proposed to be erected are to be used, either fully or in part, for the residence of members of the family, servants or tenants of the holder, the plinth area of such building or buildings proposed to be used for residential purpose shall not exceed 150 square metres, irrespective of the fact that the area of the agricultural holding on which such building or buildings are proposed to be erected exceeds 0.6 hectare.*

(4) The Collector shall not grant-such permission--

(a) (i) if the area of the agricultural holding on which such building is proposed to be erected is less than 0.4 hectare;

(ii) if the height of such building from its plinth level exceeds 5 metres and the building consists of more than one floor; that is to say, more than ground floor;

(iii) for erection of more than one farm building for each of the purposes referred to in clause" (9) of Section 2;

(b) if any such work of erection involves renewal or reconstruction or alterations or additions to an existing farm building beyond the maximum limits of the plinth area specified in subsection (3) or beyond the limit of the height of 5 metres from the plinth level and a ground floor.

Explanation. - For the purposes of sub-sections (3) and (4), if only one farm building is proposed to be erected on an agricultural holding "plinth area" means the plinth area of that building, and if more than one farm buildings are proposed to be erected on an agricultural holding, "plinth area" means the aggregate of the plinth area of all such buildings.

(5) Where an agricultural holding is situated within the limits of any municipal corporation or municipal council constituted under any law for the time being in force, the provisions of such law or of any rules or bye-laws made there under, or of the Development Control Rules made under the provisions of the Maharashtra Regional and Town Planning Act, 1966, or any rules, made by the State or Central Government in respect of regulating the building and control lines for different portions of National or State Highways or major or other district roads or village roads shall, save as otherwise provided in this Section, apply or continue to apply to any farm building or buildings to be erected thereon or to any work of renewal or reconstruction or alterations or additions to be carried out to the existing farm building or buildings thereon, as they apply to the building permissions granted or regulated by or under such law or Development Control Rules or rules in respect of regulating the building and control lines of highways or roads.

(6) Any land used for the erection of a farm building or for carrying out any work of renewal, re-construction, alterations or additions to a farm building aforesaid in contravention of the provisions of this Section shall be deemed to have been used for non-agricultural purpose and the holder or, as the case may be, any person referred to in sub-section (1) making such use of land shall be liable to the penalties or damages specified in Sections 43 or 45 or 46, as the case may be.

(emphasis supplied)

8. What Section 41(1) contemplates is that subject to the provisions of the said Section, the holder of any land assessed or held for the purpose of agriculture is entitled by himself, his servants, tenants, agents or other legal representatives to erect a farm building, construct wells or tanks or make any other improvements thereon for better cultivation of the land. Section 41(2) stipulates that before erection of any farm building or carrying out any work of renewal, re-construction, alterations, or additions, to any such farm building, or any farm building erected in the areas mentioned in the said sub-section would require the requisite permission.

9. According to Mr.Sale, the suit lands do not fall within any of the areas mentioned in sub-section (2) of Section 41. For the sake of argument, we will accept this submission. Even then, assuming that no permission was required because of section 41(1), the construction of the farm building can only be done for making improvements thereon for better cultivation of the said land. In other words, the construction that would be permitted on this land would only be for activities incidental to and/or for promoting cultivation. In the facts of the present case, it is the Petitioners' own case [as pleaded in paragraph Nos. 4, 6 and 15 of

the Writ Petition] that the suit lands are not cultivable and the construction has been put up so that they can earn rent by letting it out to third parties. In other words, it is the specific case of the Petitioners that the construction put up by them is not for better cultivation of the land. It is put up to let it out to third parties so that they can earn rent. Once this is the specific case of the Petitioners, we are afraid that even section 41(1) of the MLRC, 1966, assuming it can be interpreted the way Mr.Sale wants us to, does not come to the rescue of the Petitioners.

10. Before parting, we must mention that the Collector, Thane [Respondent No.2] has also held in the impugned order that there is a violation of Section 36-A of the MLRC, 1966. Considering that we have found that the construction itself was illegal and therefore has to go, we have not gone into the issue of whether there has been any violation of Section 36-A or otherwise. That issue is expressly kept open, if the same arises in the future.

11. In view of the foregoing discussion, we find no merit in this Writ Petition. It is accordingly dismissed. However, in the facts and circumstances of the present case, there shall be no order as to costs.

12. This order will be digitally signed by the Private Secretary/
Personal Assistant of this Court. All concerned will act on
production by fax or email of a digitally signed copy of this order.

[SOMASEKHAR SUNDARESAN, J.]

[B.P.COLABAWALLA, J.]