

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12148 OF 2019

Nitin M Raut ...Petitioner
Versus
Vasai Virar City Municipal Corporation & Ors ...Respondents

WITH
WRIT PETITION NO. 1658 OF 2021

Nitin Madhusudan Raut ...Petitioner
Versus
Vasai Virar City Municipal Corporation & Ors ...Respondents

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Mr Nitin Raut, *Petitioner-in-person, present, in both Writ Petitions.*
Ms Swati Sagvekar, *for Respondents Nos 1 & 2-VVMC in both Writ Petitions.*
Mr SR Nargolkar, *with Neeta Patil, for Respondent No 7.*
Mr Kuldeep Patil, *for Respondent No 11.*
Mr Ranjeet Patil, *for Respondent No 21.*
Mr Anil D'Souza, *with Ernest Tuscano, for Respondents Nos 22 to 26 & 28 in WP/12148/2019 and for Respondents Nos 17 to 24 & 26 in WP/1658/2021.*
Mr Kedar Dighe, *Addl. GP, with AC Bhadang, AGP, for the Respondent-State.*
Mr BB Sharma, *for the Respondent-CIDCO.*

CORAM G.S. Patel &
M.M. Sathaye, JJ.
DATED: 18th March 2024

PC:-

1. Heard.

2. In our view, both these Writ Petitions are completely misconceived. It would be perhaps unfair to describe them as an abuse of the process of this Court. We would have unhesitatingly said so had the Petitioner been represented by an Advocate. But the principle remains the same. It is not open to a party to keep filing one Writ Petition after another especially when the earlier Writ Petitions have been disposed of, Special Leave Petitions (“SLPs”) have been dismissed, and pursuant to those disposals, civil proceedings have been initiated regarding the very subject matter of the Writ Petitions in which the Petitioner has obtained orders for impleadment.

3. The prayers in Writ Petition No 12148 of 2019 are these:

“(a) The Hon’ble Court may be pleased to issue a Writ of Mandamus and/or writ in the nature of Mandamus or any other Writ, order or direction, thereby directing the Resp. No. 1 to 5 and more particularly Resp. No. 1 & 2, Vasai Virar City Municipal Corporation and the Municipal Commissioner to initiate action of demolition of illegal constructions carried out on Playground reservation (R. No. 114) on lands bearing Survey No. 112, 113 & 115 situated at Village: Virar, Taluka: Vasai, Dist.: Palghar.

(b) The Hon’ble Court may be pleased to issue a Writ of Mandamus and/or writ in the nature of Mandamus or any other Writ, order or direction, thereby directing the Resp. No. 1 to 5 and more particularly Resp. No. 1 & 2, Vasai Virar City Municipal Corporation and the Municipal Commissioner to construct the Playground (R. No. 114) on the lands bearing Survey No. 112, 113 & 115 situated at

Village: Virar, Taluka: Vasai, Dist.: Palghar.”

4. The prayers in the companion Writ Petition No 1658 of 2021 read thus:

“(a) This Hon’ble Court may be pleased to issue a Writ of Mandamus and/or writ in the nature of Mandamus or any other writ, order or direction, thereby directing the Respondent Nos. 1 to 4 and more particularly Respondent Nos. 1 and 2, the Vasai Virar City Municipal Corporation and the Municipal Commissioner to demolish the illegal constructions carried out on the lands bearing Survey Nos. 112(part), 113 & 114(part) situated at Village: Virar, Taluka: Vasai, District: Palghar.

(b) This Hon’ble Court may be pleased to issue a Writ of Mandamus and/or writ in the nature of Mandamus or any other writ, order or direction, thereby directing the Respondent Nos. 1 to 4 and more particularly Respondent Nos. 1 and 2, the Vasai Virar City Municipal Corporation and the Municipal Commissioner to construct the 20.0 Meter wide D.P. Road on the lands bearing Survey Nos. 112(part), 113 & 114(Part) situated at Village: Virar, Tal.: Vasai, Dist.: Palghar.

5. Obviously, the prayers in the second Writ Petition are subsumed in the first. But to a very large extent, the prayers in both Writ Petitions are actually subsumed in the order dated 4th April 2019 that came to be made in a previous Writ Petition No 5489 of 2015 that this very Petitioner had filed. That order of 4th July 2019 was by a Bench of which one of us (GS Patel J) was a member. The prayers in that Writ Petition are set out at page 145 of the present

Writ Petition No 12148 of 2019. Paragraph 1 of that order reads thus:

“1. Writ Petition No. 5489 of 2015 is filed in this Court to seek the following reliefs:-

(a) This Hon’ble Court may be pleased to issue a Writ of Mandamus and/or writ in the nature of Mandamus or any other Writ, order or direction, thereby directing the Respondent Nos.1 to 4 and more particularly Respondent Nos.1 & 2 Vasai-Virar City Municipal Corporation and the Municipal Commissioner to initiate action of demolition of illegal construction carried out on the lands bearing Survey Nos.112, 113 & 114 situated at Village-Virar, Taluka Vasai, Dist-Palghar;

(b) This Hon’ble Court may be pleased to issue a Writ of Mandamus and/or writ in the nature of Mandamus or any other Writ, order or direction, thereby directing the Respondent Nos.1 to 4 and more particularly Respondent Nos.1 & 2 Vasai-Virar City Municipal Corporation and the Municipal Commissioner to construct D.P. road on the lands bearing Survey Nos.112, 113 and 114 situated at village Virar, Taluka-Vasai, Dist-Palghar.”

6. Thus, those prayers were for the same reliefs — or substantially the same reliefs — as the present Petitions.

7. There was a companion Petition in 2015 as well. After hearing both sides, the decision of the Division Bench in paragraphs 5, 7, 12, 13, 15 and 16 reads as follows:

“5. Thereafter on account of ill-health, the father of the petitioner could not pursue this request and that is how the petitioner stepped in. The petitioner says categorically that the family of the petitioner has already surrendered land

admeasuring 3500 sq. meters or thereabout for development of this road. However, the construction, on Survey Nos.112 to 114, which are reserved plots, is the reason for the road not being laid and constructed. The petitioner being interested in having the full Development Plan Road in terms of the reservation, corresponded with the Municipal Corporation and requested the Corporation to take steps to have these structures demolished. Once the request made by him and including to carry out a proper survey did not result in the desired action being initiated, alleging that the Corporation and other officials are protecting these constructions, the petitioner has approached this Court.

7. We must also refer to the additional affidavit that the petitioner has filed. The petitioner has submitted before this Court that the private respondents, who are arraigned as such by him, are not the sole title holders. There are as many as 36 land holders whose names are officially recorded in the revenue record or 7/12th extract of the said land. These respondents do not have a authority or power on behalf of all the land owners. Similarly, he has brought to the notice of this Court the factum that some of the properties are jointly held. There has been no partition nor has there been any document produced denoting that the shares are demarcated and held by specific individuals. It is, therefore, clear that several affidavits may have been filed, but we are only concerned with the stand of the Municipal Corporation. In its affidavit, we have not seen a contra stand. In fact, the Municipal Corporation does not dispute the allegations and the averments in the petition and position that in the Development Plan, there is a reservation. This stand of the Municipal Corporation makes our task simple. There is no contest and the Planning Authority must be allowed to take the notices issued to the wrongdoers to its logical, legal conclusion. The writ petition

is disposed of with this expectation that the Municipal Corporation will act accordingly. The civil applications also stand disposed of.

12. We are spared from making any reference and further to the facts and pleadings in this petition because Mr.Nargolkar, learned advocate appearing in support of this petition fairly states, on instructions, that this petitioner has constructed building Nos.15, 16, 18 and 19. This petitioner has, indeed, conferred the development rights in respect of building Nos.15, 16, 18 and 19. These have been constructed and now it is apparent that without any order converting the user of the land from agricultural to non-agricultural issued by the Collector and in the absence of the No-objection certificate from the Municipal Corporation. These are, therefore, the buildings, which cannot stand and ought to be removed.

13. These are indeed constructed on the portions of the land reserved for the Development Plan road.

15. After having conceded that these permissions have not been granted, the petitioner must suffer the consequences of dismissal. It is possible in such circumstances for somebody else to urge, who was in law obliged to obtain these permissions and approvals, that he has proceeded on a statutory presumption that if the application is made, but if no decision has been taken thereon either way and communicated within the period specified in the statute, then, the permissions are deemed to have been granted. Presently, the petitioner before us has not contended anything in terms of these presumptions or deemed sanction. We do not, therefore, have to express any opinion on this aspect of the matter. We leave that issue open for consideration when raised in appropriate proceedings before an appropriate forum.

16. Writ Petition No.7632 of 2016, however, is disposed

of by accepting the statement of the petitioner's advocate that this petitioner is willing to offer a rehabilitation or alternate package to the occupants of the building Nos.15, 16, 18 and 19, but it is conditional and it is entirely for the occupants to accept it and all consequences of either refusal to accept or its acceptance as provided in law shall follow.”

8. The reference in paragraph 15 would appear to be a reference to the companion Writ Petition No 7632 of 2016 filed by Varthak. The decision of the Division Bench was taken to the Supreme Court which dismissed the SLP by its order dated 14th October 2019. The Supreme Court declined to interfere in the Writ Petition but observed that the High Court had kept all issues open to be decided on merits in accordance with law in “appropriate proceedings” including remedies available to the municipal authority for proceeding against unauthorised structures in accordance with law. The Supreme Court reiterated that position. It clarified that no observation made by the High Court in the 4th July 2019 order would be an impediment to any parties in pursuing such remedies as may be permissible in law. Any such proceedings would be decided uninfluenced by any observations in our 4th July 2019 order.

9. The Petitioner reads this as a license to mean that the 4th July 2019 order has been set aside. It has not. The challenge to that order was dismissed. The SLP failed. “Appropriate proceedings” in the Supreme Court order does not mean a second Writ Petition or set of Writ Petitions canvassing the very same rights. It is obviously a reference to civil proceedings.

10. As a matter of fact, those civil proceedings have been adopted. Those Suits were filed by the cooperative societies that have come up on the plots in question.

11. We note that the present Writ Petition involves now one additional plot No 115. But the Suits, Mr D'Souza clarifies, include all the plots, i.e., 112, 113, 114 and 115. The Petitioner is actively contesting those proceedings having got himself impleaded in them.

12. By filing this Writ Petition, effectively what the Petitioner seeks is nothing but a dismissal of those civil suits. That would be the inevitable result of any order in the present Writ Petitions. We do not see how the civil suits could possibly survive if Rule was to be made absolute in these Writ Petitions.

13. The short issue is about the removal of buildings said to be illegal and the restoration of reservations and their implementation or whether, those reservations not having been built, some other action by the Vasai Virar City Municipal Corporation (“VVMC”) is permissible in law. That is precisely the issue before the civil court.

14. Lastly, we have no manner of doubt that the Petitioner stands to gain personally and quite considerably from a development of the reservation, particularly the DP road in question. This is therefore not a simple case of pointing out that the VVMC has not obtained a civic amenity or of a public interest issue at all.

15. We do not think it would be appropriate to say anything further given that the civil suit is pending.

16. Both Writ Petitions are rejected. There will be no order as to costs.

17. We make it clear that our observations today will not come in the way of a decision on merits in the civil suits or in any interim applications in those civil suits. Those proceedings will be decided strictly on their own merits.

18. The Petitioner now says that all that he wants is a DP road and this can be constructed without demolishing a single one of the buildings. If that is indeed his case, it is open to the Petitioner to enter into appropriate Consent Terms subject to those being in accordance with law and subject to the consent of Ms Sagvekar for the VVMC in that Civil Court. We are passing no such order.

(M.M. Sathaye, J)

(G. S. Patel, J)

Note: This order is modified as per order dated 1st April 2024. The corrections are shown in bold and italics in the cause title.