

Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 761 OF 2024

Altanta Ltd

...Petitioner

Versus

Thane Municipal Corporation & Ors

...Respondents

Mr Mukesh Vashi, Senior Advocate, with Aparna Deokar, i/b MP Vashi & Associates, for the Petitioner.

Mr Anand Kulkarni, for Respondent No 1-TMC.

Ms MP Thakur, AGP, for the Respondent-State.

Mr Sandeep Mishra, for Respondents Nos 4 to 6 & 15.

Mr SP Srivastava, for Respondents Nos 10 & 12.

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 6th February 2024

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1. The Petitioner, represented by Mr Vashi claims to own a land being Survey No 67, Hissa No 2/A, 3/A and 3/B situated at Sheel, opposite Datta Mandir, Kalyan Shilphata, Mumbai Pune Road, Mumbra, Thane 400612. The land is said to admeasure 30,600 sq mts. On this, the Petitioner has put up some construction. Paragraph 5 of the Petition says that the land was affected by a 40 meter wide Development Plan (“DP”) Road on the south and a 60 meter wide highway (Mumbai Pune Highway) and a 9 meter wide proposed service road to the north.

2. On 6th March 2012, the Petitioner claims to have surrendered possession of the land required for the 9 meter wide service road (584.10 sq mts), the 40 meter wide DP Road (6947.68 sq mts), and for the 60 meter highway (1028.07 sq mts) to the Thane Municipal Corporation (“TMC”), the 1st Respondent. It seems that the land required for the 9 meter wide proposed service road was 584.10 sq mts but upon recalculation, the TMC said it needed 606.90 sq mts for this service road. There was a rectification of declaration and indemnity dated 5th November 2015 under which the Petitioner surrendered possession of the additional land.

3. By resolution No S/11/0017/10, the General Body of the TMC cancelled the requirement or requisition for the 9 meter wide service road. On 25th July 2017, the TMC informed the Petitioner’s architect about this cancellation and said that the TMC had no objection to a cancellation declaration.

4. On receiving this letter, the Petitioner found that the land it had surrendered to the TMC for the 9 meter wide service road had been encroached by Respondents Nos 3 to 16. The Petitioner wrote to the TMC on 26th July 2017 and 9th September 2017 to remove these encroachments. Reminders followed. Ultimately, the TMC issued notices to Respondents Nos 3 to 16. Those notices were of 3rd and 27th June 2023. Finally, on 7th November 2023, the TMC demolished the structures of Respondents Nos 3 to 16.

5. Pausing for a moment, we note that the Advocates for Respondents Nos 3 to 16 do not dispute that they are neither the owners nor the lessees of any part of the land on which their structures were built. They also do not dispute that the structures

had no authorisation of building permissions from the TMC at all. They all simply claim that the structures were there for a long period of time, and some say that they were assessed to various municipal levies. However, this will make very little difference in the facts and circumstances of the case. There cannot be a fundamental right to encroach.

6. The Petitioner says that on return of the surrendered service road land, it was the obligation of the TMC to construct a wall or put up galvanised iron sheets around the land so returned. We do not see how that can be canvassed as a matter of right. The Petitioner may be correct in saying that it is willing to bear the cost of construction of a wall or a boundary fencing and that permission should be granted for this purpose.

7. The Petitioner also requested for police protection. Quite rightly, the TMC has said that it is in no position to afford police protection to the Petitioner.

8. Prayer clauses (a) to (d) in the Petition read thus:

“a. That a writ of mandamus or any other writ order or direction be issued ordering and directing the Respondent No. 1 to construct a wall or put up GI sheets having height of 25/35 ft. on a land shown in purple colour on the plan annexed at Exhibit A, if required with police protection.

b. That in alternative of prayer (a), that a writ of mandamus or any other writ order or direction be issued ordering and directing the Respondent No. 2 to grant adequate police protection to the Petitioner and its contractors to construct a boundary wall or put up a GI sheets having height of 25/35 ft. on the land shown in purple colour on the plan annexed at Exhibit A.

c. That pending the hearing and final disposal of the petition, the Respondent No. 1 be ordered and directed to construct a wall or put up GI sheets having height of 25/35 ft. on a land shown in purple colour on the plan annexed at Exhibit A, if required with police protection.

d. In the alternative to prayer (c) that pending the hearing and final disposal of the petition, the Respondent No. 2 be ordered and directed to grant adequate police protection to the Petitioner and its contractors to construct a boundary wall or put up a GI sheets having height 25/35 ft. on the land shown in purple colour on the plan annexed at Exhibit A.”

9. Respondents Nos 3 to 16 say that they have filed Petitions of their own. That may be so, but in view of the fact that they have no rights over the land and their structures are unauthorised and furthermore, since their structures have been removed by the TMC after notice, there is not the slightest possibility of us permitting in this Writ Petition Respondents Nos 3 to 16 to reconstruct their structures on the land once earmarked for the 9 meter service road.

10. That land is now in possession of the Petitioner, and Petitioner is entitled to apply for permission for a boundary wall at its own cost. Before us, on behalf of the TMC it is stated *inter alia* on the basis of a communication of 23rd November 2023 that if the Petitioner wishes to construct a boundary wall, it is at liberty to do so, but Petitioner cannot expect the TMC to do it on the Petitioner’s behalf. We are told that no permission from the TMC is needed for this compound wall.

11. We accept these statements. The Petitioner is at liberty to take all necessary steps to construct a boundary wall around the

property that was surrendered for the 9 meter wide service road and which requirement was cancelled by the TMC, in pursuance of which the land was returned to the Petitioner.

12. It is for the Petitioner to make the necessary application to the local police authority. We are making no order in that regard.

13. No further orders are required in this Petition. It is disposed of in these terms. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)