

lgc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 834 OF 2024

Jaywant Parshuram Naik ...Petitioner
Versus
The State of Maharashtra and ors. ...Respondents

Mr Arshad Shaikh, *Senior Advocate a/w Advocates Devansh Malhotra, Rajendra Jain, Vinsha Acharya, and Pranil Lahigade i/by for the Petitioner.*

Ms M P Thakur, *AGP for the Respondents 1 to 5 - State*

Mr Kalpesh Patil, *a/w Mr Prashant Raul for Respondent No.6.*

Dr Uday Warunjikar, *i/by Mr Sumit Kate for the Respondent Nos. 7 to 9.*

Mr Vikram Patil, *Tahasildar, present.*

Mr Sakharam Aaje, *Circle Officer, present.*

CORAM M.S. Sonak &
 Kamal Khata, JJ.
DATED: 30 August 2024

PC:-

1. Heard learned counsel for the parties.
2. The Petitioner has complained about a patently illegal and unauthorised resort constructed by Respondents 7 to 9 on a plot of land bearing Gat No.612 in the Village – Nagaon, Taluka Alibaug, District Raigad.

3. The Petitioner has alleged that this resort is constructed on agricultural land without obtaining conversion from the Collector. The Petitioner has also alleged that no permissions from any authorities, except perhaps the village Panchayat, which is not the prescribed authority, have been obtained. Still, this patently illegal construction is being used as a resort. He pointed out that this resort has amenities like a swimming pool, spa, bar and restaurant. The photographs of this resort are on pages 34 and 35 of the Petition.

4. To begin with, we could not imagine such a thing was possible. However, Mr. Shaikh referred us to the Affidavit filed on behalf of Respondents 7 to 9, in which there was no denial that the resort had no permission from any authorities except the Village Panchayat. There was also a statement that an application had been made for regularisation to the Collector of Alibaug, which was pending.

5. Dr. Warunjikar, the learned counsel for Respondents 7 to 9, also, with his usual fairness, admitted that this resort had no other permissions except permission from the Village Panchayat. On instructions, he disputed that any bar was being run from this resort.

6. Ms. Thakur, the learned AGP for the Respondents – -State, based on instructions from the Tahasildar and Circle Officer, who are present in Court today, submitted before us that the construction of this resort began sometime in 2021-2022. After the Petitioner filed his complaint on 24 January 2023, the Collector required the Sub-Divisional Officer, the Tahasildar and the Circle

Officer to visit the site and ascertain whether there was any truth in the complaint.

7. Ms Thakur submitted that, on finding that the resort was not backed by any permissions from the MMRDA, the Collector, or other authorities, a notice dated 16 June 2023 was issued to the resort owners under Section 53 of the Maharashtra Regional Town Planning Act (“MRTP Act”). In response to such notice, the resort owners applied for regularization/retention under Section 44/45 of the MRTP Act on 16 October 2023.

8. Ms. Thakur submitted that on 29 November 2023, the resort owners were informed that such an application had to be filed Online, and therefore, they were granted some time to apply Online. For almost four months, the resort owners did nothing, and on 26 March 2024, once again, they submitted an application for regularization Offline.

9. Ms. Thakur pointed out that although submitting such an application offline was not in terms of the procedure laid down, the Collector referred the matter to the Assistant Director of Town Planning (“ADTP”) on 27 March 2024 to obtain a preliminary report on whether the structures constituting this resort are regularizable.

10. From the submissions made before us, we are prima facie satisfied that this is not even a case where a proper application for regularisation can be said to be pending. At least prima facie it appears that the resort owners want to buy time by filing application Offline and in all probabilities, without complying with

the prescribed procedures to avoid the demolition of this patently illegal resort.

11. Accordingly, we were inclined to order the sealing of this resort immediately because such brazen illegalities cannot be permitted in the first place. If tolerated on account of inaction or a host of other reasons that we need not discuss at this stage, resort owners cannot be permitted to exploit this patently unauthorised construction for commercial purposes.

12. However, Dr. Warunjikar, based upon instructions of one of the resort owners, who is present in Court today, made a statement that within a week from today, the resort would be closed down. No commercial activities whatsoever in nature would be undertaken through it, and the resort would be only used by the resort owners as their residence. By accepting this statement, we refrain from ordering its immediate sealing. Dr Warunjikar, on instructions, states that such undertaking would be filed on Tuesday, 03 September 2024. We can accept the undertaking and not order the sealing if the undertaking is satisfactory.

13. Besides, if we find that the undertaking is breached by adopting any subterfuge, then, apart from any action under the Contempt of Courts Act, we will again consider sealing the resort immediately for all purposes. As it is, the structures which constitute this resort are patently illegal and unauthorised.

14. No conversion was obtained from the Collector, which was an essential pre-requisite. There are no permissions from the Planning Authorities like MMRDA. Once the area comes under the

jurisdiction of a Special Planning Authority like MMRDA, the Panchayats have no authority to grant any permissions. In any event, based only on some permissions issued by the Panchayat, there is no question of such massive constructions or any construction coming up and being used for commercial purposes. Since no permissions were obtained, obviously, there is no occupancy certificate. Nothing shows that any fire safety requirements have been complied with. If the structure is to be used as a resort, all these factors should be considered mandatory.

15. We list this matter on 04 September 2024 to consider the undertaking. We direct the Collector, Alibaug, to file an Affidavit in this matter within two weeks from today, i.e. on or before 13 September 2024.

16. We also direct the sixth Respondent to file an Affidavit within two weeks from today, i.e., on or before 13 September 2024, explaining how such permissions were granted and the authority under which such permissions came to be given. A complete record, including any resolution passed by the Panchayat, should be produced along with the affidavit. List this matter on 04 September 2024 for directions.

(Kamal Khata, J)

(M.S. Sonak, J)