

Ajay

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 203 OF 2024

Sadanand Gangaram Kadam

.. Petitioner

Versus

Additional Commissioner, Konkan Bhavan and
Ors.

.. Respondents

-
- Mr. Shardul Singh a/w. Ms. Prerna Gandhi, Advocates for Petitioner.
 - Mr. Y.D. Patil, AGP for the State.
 - Mr. Paresh C. Mankad a/w. Nihar P. Mankad i/by Rohan Mahadik for Respondent No.4.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 05, 2024.

P.C.:

1. Heard Mr. Singh, learned Advocate for Petitioner; Mr. Patil, learned AGP for the State and Mr. Mankad, learned Advocate for Respondent No.4.

2. The present Writ Petition takes exception to the Demolition Notice dated 06.12.2023. The facts as narrated by Mr. Singh, appearing on behalf of the Petitioner are *prima facie* shocking.

3. However, Mr. Mankad, learned Advocate for Respondent No.4 would fairly submit that considering that the service of the Writ Petition was received yesterday, he has been unable to take appropriate instructions and therefore would submit that before

passing any order after hearing Mr. Singh, this Court be pleased to allow Respondent No.4 to file his say and consider the same.

4. Briefly stated, the genesis of the present dispute i.e. Demolition Notice issued to the Petitioner begins from the date of purchase of a property situated at Khed being land on 08.02.2007 by 5 partners of a firm called “M/s. Sai Star Distributors”. Out of the 5 partners, Petitioner No.1 and Respondent No.4 were two partners who are before the Court in the *lis*. The other 3 partners are not concerned.

5. Mr. Singh would submit that by consent Award dated 06.05.2017 disputes between the partners of M/s. Sai Star Distributors were settled, *inter alia*, Respondent No.4 retired from the firm and the entitlement of the land at Khed which is referred to herein above came to the share/entitlement of the Petitioner. He would submit that Respondent No.4, if aggrieved with the consent Award, would have filed proceedings to challenge the Award even though it was a consent Award but never did so and therefore according to him the consent Award has become final.

6. He would next submit that in view of the above, Petitioner No.1 applied to the Sub Divisional Officer seeking NA permission with the intention to develop the said land at Khed and developed a Resort after obtaining permission from the Planning Authorities. He would

submit that NA permission was received by the Petitioner No.1 on 03.08.2021 specifying miscellaneous conditions, general conditions and other conditions therein. In fairness, he has drawn my attention to 4 miscellaneous conditions stated in the NA order regarding onus of any dispute with respect to ownership of the said land at Khed would be on the Petitioner in the event of any dispute. Consent Award is at page No.18 and NA permission is at page No.36 of the Writ Petition. I have perused the same.

7. Next he would submit that on 26.10.2023 Petitioner No.1 received a show-cause-notice issued by the Additional Collector on the basis of and at the behest of a private complaint filed by Respondent No.4 alleging breach of the NA permission granted to the Petitioner.

8. At this stage, it needs to be noted that once the Respondent No.4 stood retired from the partnership firm and the said land having come to the entitlement of the Petitioner No.1 by virtue of the consent Award, maintainability of any such private complaint by the Respondent No.4 in respect of the Khed land alleging breach of NA permission granted in favour of the Petitioner was not *prima facie* maintainable at all, despite which the issue has proceeded further. The show-cause-notice was contested by the Petitioner by filing Reply dated 08.11.2023.

9. After hearing the Petitioner, the Additional Collector passed order dated 24.11.2023 which was received by the Petitioner on 09.12.2023 revoking the NA permission and setting it aside. Against this order, Petitioner filed statutory Appeal under Section 247 of the Maharashtra Land Revenue Code, 1966 before the Additional Collector alongwith the stay Application. It is informed to the Court that the said Appeal alongwith stay Application is pending but despite repeated requests being made by the Petitioner in the interregnum for it to be heard for stay.

10. Despite the aforesaid invocation of statutory remedy by the Petitioner, the matter does not stop here. On 08.12.2023, Petitioner received a Demolition Notice which was dated 06.12.2023. This Demolition Notice is now aimed at demolition of the construction carried out by the Petitioner pursuant to the valid NA permission dated 03.08.2021.

11. The aforementioned facts are some what serious especially in view of the Respondent No.4 having retired from the partnership firm and the said land having admittedly come to the entitlement of the Petitioner No.1. Though it is argued before me that the statutory Appeal is pending before the First Appellate Authority i.e. Additional Collector, the aforementioned facts are extremely strong and require intervention of this Court so as to ensure that no litigant or party can

take advantage of the legal system for granted and file innocuous complaints.

12. However, before proceeding further Mr. Mankad has made an earnest request to the Court to permit the Respondent No.4 to file his say. I am inclined to grant that opportunity to the Respondent No.4.

13. In view of the above, the impugned Demolition Notice dated 06.12.2023 which is at page No.50 of the Petition is expressly stayed.

14. Needless to state that the impugned order dated 24.11.2023 at page No.51 of the Writ Petition shall not be proceeded with or acted upon by the statutory authorities. The present Writ Petition is heard for ad-interim relief today. An arguable case has been made out for grant of ad-interim relief by Mr. Singh.

15. Respondents are directed to file their Affidavit-in-Reply within a period of two weeks from today. Rejoinder, if any, to be filed within one week thereafter.

16. Mr. Patil, learned AGP shall ensure that copy of this order shall be placed before the concerned Competent Authorities. It is clarified that no coercive steps shall be taken against the Petitioner's construction on the said land at Khed in view of the present Writ Petition being heard by this Court as directed above.

17. It is further clarified that Respondent No.1 – Additional Commissioner shall not proceed with the hearing of the statutory Appeal filed by the Petitioner as referred to and alluded to herein above in view of the gross facts in the present case, until the Petition is heard for interim relief.

18. Stand over to **02nd February, 2024.**

[MILIND N. JADHAV, J.]

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