Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9637 OF 2024

Bharat Prabhudas Vasita …Petitioner
Versus
The State of Maharashtra & Ors …Respondents

Mr Monish Bhatia, *for the Petitioner.*
Mr AA Alaspurkar, AGP, *for the Respondent-State.*

CORAM M.S. Sonak &
Kamal Khata, JJ.
DATED: 8th July 2024

ASHWINI H GAJAKOSH
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PC:-

1. Heard learned Counsel for the Petitioner.

2. The Petitioner challenges an order/notice dated 3rd July 2024 by which the Corporation has directed the Petitioner to demolish the premises through which the Petitioner operates a bar and restaurant, orchestra bar, and ladies' service bar.

3. Learned Counsel for the Petitioner contends that on 3rd August 2007, the Petitioner's father applied for regularisation of the structure, and this application has not been disposed of to date. He submitted that Clause 3 of the impugned order, which refers to no

pending application for regularisation, is incorrect since the regularisation application was indeed filed on 3rd August 2007.

4. Learned Counsel for the Petitioner submits that in terms of the Ulhasanagar Ordinance of 2006, all unauthorised constructions put up before the 1st January 2005 are protected. He submits that this construction in question, though unauthorised, was put up before 1st January 2005.

5. For the above two reasons, learned Counsel for the Petitioner submits that the impugned order dated 3rd July 2024 is vulnerable and warrants interference.

6. We have considered the contentions raised by the learned Counsel for the Petitioner and also perused the record. However, we are not inclined to entertain this petition for the reasons that follow.

7. Firstly, we find that the impugned order dated 3rd July 2024 was made after granting the Petitioner full opportunity to show cause and to produce documents. It is only upon perusing the documents produced by the Petitioner that the impugned order has been made. Therefore, there is no procedural impropriety in making the impugned order.

8. The Petitioner was served with the show cause notice on 17th January 2024. The Petitioner was given a further opportunity to comply with the requirements in the show cause notice. The Petitioner will also heard before the impugned order was made.

Thus, every possible opportunity was extended to the Petitioner before the impugned order was made. Despite all such opportunities, the Petitioner was not able to make out any case as to why the patently illegal and unauthorised construction put up by him or his father ought to remain undemolished.

9. Secondly, the petitioner's contention based upon the alleged pendency of the regularisation application lacks merit. The Petitioner has relied upon the notice dated 10th April 2006 (Exhibit D at page 53), which granted the Petitioner an opportunity to seek regularisation within one month of receiving it. This notice refers to the City of Ulhasnagar Ordinance of 2006, on which the Petitioner relies. The Petitioner's father, however, applied for requisition only on 3rd August 2007, i.e., after more than a year from the receipt of the notice dated 10th April 2006. Besides, learned Counsel for the Petitioner admitted that the compounding fees referred to in the notice dated 10th April 2006 were not paid along with the highly belated application. In fact, the compounding fees have not been paid to date.

10. From the above, it is apparent that there was no valid application for regularisation made by the Petitioner or his father. Therefore, the contention about the pendency of the regularisation application from 2007 is quite misconceived and cannot be a ground to protect the patently illegal construction put up by the Petitioner. The Petitioner's entire attempt was to file some application and to keep the same pending. Based on such pendency, the Petitioner now seeks to resist the implementation of a lawful order. This is clearly

impermissible, and the writ jurisdiction of this Court cannot be extended to protect such patent illegalities.

11. Thirdly, in this case, we note that even the praecipe filed before us this morning urging us to take the matter urgently was misleading. In the praecipe, there was no reference to due procedure followed by the corporation. A blanket statement was made that the Petitioner's application for regularisation made on 3rd August 2007 remains undecided "*despite full compliance with all procedural requirements*". Now, it is evident that this application was made way beyond the period prescribed. It was also admitted that the compounding fees, which were one of the essential procedural requirements, were never complied with. Thus, it is clear that the Petitioner was not even candid with the Court while seeking urgent circulation.

12. Fourthly, In this case, we find that the Petitioner has virtually abused the judicial and municipal process. Through a patently illegal and unauthorised structure, Petitioner has carried out commerce for all these years. Even the terms and conditions of the Ordinance that the Petitioner seeks to rely upon were never complied with. If the Petitioner was really serious about the alleged pending requlrisation application from 2007, the least that was expected from the Petitioner was to take some steps to obtain orders. Instead, the Petitioner was content to carry out his business from patently illegal and unauthorised premises, perhaps because the Petitioner was aware that the illegalities in the construction were not even regularisable. Despite several opportunities, the Petitioner has failed

to point out any legality in the constructions put up. Even the circulation was obtained without stating all the correct facts.

13. For all the above reasons, we dismiss this Petition with costs of Rs. 50,000/-. The petitioner should pay the cost to the Bar Council of Maharashtra and Goa Advocates Welfare Fund within two weeks. The necessary receipt should be filed in the Registry.

14. The Petition is, thus, liable to be dismissed and is hereby dismissed with costs.

(Kamal Khata, J) **(M.S. Sonak, J)**