

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12120 OF 2024

Zahid Hasan Patel & Ors. ...Petitioners

Versus

State of Maharashtra & Ors. ...Respondents

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Mr.Sandeep Mishra, with Mr.Prakash Mishra i/b Mr.Vijay Tiwari
for the Petitioners.

Mr, A.A. Alaspurkar, AGP for the State – Respondents No.1.

Mr. Mandar Limaye, for the TMC – Respondent No.2.

CORAM. M.S. Sonak &
Kamal Khata, JJ
DATED: 27th August 2024

PC:-

1. Heard Mr Mishra for the Petitioners, Mr Alaspurkar learned AGP for Respondent (State), and Mr Limaye for Respondent No.2 (TMC).

2. This Petition challenges the order dated 14.1.2022 issued by the TMC to demolish the unauthorised building under the name and style of “Nisha Apartment.”

3. Mr.Mishra, learned counsel for the Petitioners, submits that the Petitioners are occupants of the apartments in the building, and no notice was served upon them. He, therefore, submits that the action of demolition violates the principles of natural justice. He relies upon the judgment of the Supreme Court in the case of *Sharvan Developers Private Limited & Anr. vs. The Municipal Corporation of Greater Mumbai & Ors. 2012 (7) ALL MR 92* in support of his proposition.

4. Mr.Mishra submits that giving notice to the owner, builder, or developer is not sufficient in such matters, and notices were necessary to all the Petitioners before any action of demolition could be taken or any demolition orders executed.

5. Mr Limaye, learned counsel for the TMC, submits that this Petition is in continuation of the proceedings in Writ Petition No.3891 of 2021, Contempt Petition No.298 of 2022 and various interim applications in such proceedings to stall the demolition drive, which is scheduled tomorrow, i.e. on 28.8.2024.

6. Mr Limaye pointed out that the building is wholly unauthorised because it was constructed without any permission from any authorities. He pointed out that while the construction was ongoing, TMC issued stop-work orders. However, they defied

the stop-work orders. The construction proceeded, and the builder and developer apparently inducted third parties without any authority of law. He pointed out that there are no permissions, and consequently, there is no occupancy certificate.

7. Mr.Limaye pointed out that the proper show cause notices were issued, and the order at Exhibit-I dated 14.1.2022 shows that not only the owner/builder but some of the flat owners were also heard through an advocate. He pointed out that the owner/developer also applied for regularisation on behalf of himself and the flat owners. This regularisation has also been rejected. Accordingly, he submitted that the very institution of this Petition is an abuse of the process, and this Petition must be dismissed with exemplary costs.

8. The rival contentions now fall for our determination.

9. The Petitioners nowhere pleaded Nisha Apartment is an authorised structure. In response to our query, Mr Mishra, the learned counsel for the Petitioners, admitted that this building was constructed without any permissions, and consequently, there is no occupancy certificate. In any event, he was unable to produce any permissions. There are no pleadings about any permissions. He submitted that the only ground on which this Petition is filed is what he terms a breach of principles of natural justice and due process.

10. The record shows that the building in question is wholly unauthorised, as no permission was obtained from any authority. Mr Limaye has submitted that stop-work notices were issued when the construction was going on. Still, in defiance of such stop-work notices, the construction proceeded, and even third-party rights were sought to be created. Such third parties are now petitioning this Court and complaining about the failure of natural justice or due process.

11. The concept of natural justice and due process are not as rigid as the learned counsel for the Petitioners would require us to believe. Even due process of law was followed. The Petitioners cannot benefit from wholly unauthorised or illegal constructions and insist that some notice should be given to them to show cause. The Petitioners have admitted before us that the constructions are without any permission from any authorities and that they are staying in the apartments without there being any occupancy certificate.

12. The rampant problem of construction without building permissions and their occupation without occupancy certificates must be dealt with seriously. Construction without permissions rarely or only seldom considers requirements like building regulations, fire safety, hygiene, etc. If permissions are applied, the builders/developers must follow the building rules and the fire safety codes. Yet, suppose constructions of the present nature are encouraged. In that case, the builders/developers and, finally, the occupiers consider themselves not to be bound by any of such legal requirements enacted for their safety and general protection.

This is a matter of construction proceeded brazenly despite a stop work order and complaints.

13. Under the above circumstances, the Petitioners cannot insist upon an unnatural expansion of the principles of natural justice. The Petitioners, who are shown scant regard for legal processes or due process, cannot now, in the peculiar facts of this case, insist upon due process. In any event, we are satisfied that the TMC, in this case, has followed due process.

14. The Petitioners have placed on record a detailed speaking order dated 14 January 2022, by which the TMC heard and dealt with the objections of the owners/builders and some of the apartment owners who appeared in the matter through an advocate. This was followed by the application for regularisation, which has also been considered and rejected. The owners/builders have instituted an appeal challenging the rejection of regularisation and parallelly instituted a civil suit. There are no interim reliefs in any of these proceedings.

15. Writ Petition No.3891 of 2021 was instituted by the complainants Ayub Ali Khanbande and others. Based on some orders in such writ petition, the TMC initiated action. Even the demolition order dated 14 January 2022 was made. However, there was a delay in its implementation. Therefore, Ayub Ali Khanbande instituted Contempt Petition No.298 of 2022 in this Court. This Contempt Petition was disposed of by order dated 11 July 2024 after directing the TMC to execute its demolition order

dated 14 January 2022 within four weeks unless prevented by any legal impediment.

16. To stall the TMC's action, the owners/builders filed an Interim Application in this Court by raising grounds similar to those in this Petition. This Interim Application was dismissed by order dated 09 August 2024. Since no compliance report was filed, we were forced to make an order on 26 August 2024, directing the TMC to report compliance.

17. Accordingly, the demolition is now scheduled for 28 August 2024. This petition was filed today and circulated for the afternoon session. We find no merits whatsoever in the contentions now raised. The decision relied upon by the learned counsel for the Petitioners cannot be read de hors the facts in which it was rendered. The gross facts of the present case coupled with compliance of natural justice are sufficient to dismiss this petition. In the absence of any case of legality, the demolition order cannot be questioned by the Petitioners at this belated stage.

18. Mr. Limaye is right in contending that a series of proceedings are being launched by the owner/developer and occupants at different fora to somehow protect the wholly unauthorised building, which was constructed in defiance of stop-work notices. We are accordingly satisfied that this Petition must be dismissed with exemplary costs.

19. Accordingly, we dismiss this Petition with costs of Rs.50,000/- (Rupees Fifty Thousand) payable by the Petitioners to the TMC within two weeks from today.

20. This petition is dismissed with costs of Rs 50,000/-, which the petitioners must pay to TMC within four weeks.

(Kamal Khata, J)

(M.S. Sonak, J)