



Darshan Patil

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

WITH
WRIT PETITION NO. 12248 OF 2024

Medha Nitin Vaidya and Ors. ...Petitioners
Versus
The State of Maharashtra and Ors. ...Respondents

Mr Rajendra Jain, a/w Mr Pramil Lahigade, Mr Pankaj Thatte
for the Petitioner in WP/834/2024 and for Respondent
No.4 in WP/12248/2024.

Dr U P Warunjikar, i/b Mr Sumit S Kate, for Respondents 7 to
9 in WP/834/2024 and for the Petitioners in
WP/12248/2024.

Mr Prashant P Raul, for Respondent No.6 in WP/834/2024.

Ms M P Thakur, AGP, for the Respondent-State.

CORAM M.S. Sonak &
 Kamal Khata, JJ.
DATED: 05 September 2024

PC:-

WRIT PETITION NO. 834 OF 2024

1. Respondents 7 to 9 have furnished an undertaking to this Court which reads as follows:-

“I, Medha Vaidya, Age: 61 Years, the Respondent no. 7 herein, residing at Village Nagaon, Alibaug, District Raigad, do state on solemn affirmation that this undertaking is being filed on behalf of the Respondent no 7 to 9 to the Writ Petition :-

1. I say that Pursuant to the order passed on 30/08/2024 by this Hon'ble High Court (Coram : Hon'ble Justice M S Sonak and Hon'ble Justice Kamal Khata), I am filing this undertaking on behalf of the respondent no. 7 to 9 before this Hon'ble Court. I further say that the respondent no. 7 is a power of attorney holder of the respondent no. 8 and 9.

2. I say that the respondent no. 7 to 9 herein are owners of the land bearing Gat No. 612 in the Village - Nagaon, Taluka Alibaug, District Raigad. I further say that the respondent no, 7 to 9 are running the "Vaarsa Resort" in the aforesaid area and also having residential premises of the said respondents.

3. I say that in view of the statement made by the said respondents before this Hon'ble High Court which is recorded in the order dated 30/08/2024, the respondent no. 7 to 9 undertakes that the said resort will be closed down for commercial purpose from 5/09/2024 till final outcome of the regularization application which is pending before the respondent no. 3. I further say that the respondent no. 7 to 9 also undertakes that no any commercial activity whatsoever would be carried out in the said premises and the resort would be only used by the resort owners i.e. respondent no. 7 to 9 for their residence purpose only.

4. I say that for security reason, now boundaries of the said resort will be closed as the respondent no. 7 to 9 will be terminating the employees employed at the resort and only the family members will be using the said property.

5. I say that this undertaking is filed in view of the order passed on 30/08/2024.”

2. This Court was about to accept this undertaking in the form in which it was given when the learned counsel for the petitioner referred us to clause No.4 of the undertaking which speaks about the boundaries of the resort being closed.

3. To us, this appeared to be a very innocuous clause in the undertaking until learned counsel for the petitioner referred to us the order dated 09 November 2023 made by the learned Single Judge in Writ Petition No. 10083 of 2023. In paragraph No.5 of this order, Dr Warunjikar learned counsel appearing on behalf of the petitioners in the said petition, who are respondents 7 to 9 in this petition, on instructions, stated that without prejudice to their rights and contentions, the petitioners (respondents 7 to 9 herein) will not object to ingress and egress of the first respondent, i.e. the petitioner herein. The learned Single Judge accepted this statement, and therefore, it was incumbent upon respondents 7 to 9 to comply with the same.

4. If the respondents now plan to close the boundaries and thereby restrict the petitioner's ingress and egress, this would conflict with the statement made in the order dated 09 November 2023. Dr Warunjikar still states that respondents 7 to 9 will not object to the petitioner's ingress and egress.

5. Accordingly, we clarify that we are not giving any permission to erect boundaries and, in any event, nothing in the undertaking or, for that matter, this order, is intended to dent or dilute the statement made and recorded in the order dated 09 November 2023 about allowing ingress and egress to the petitioner. Besides, the fact that we are accepting the

undertaking should not be construed as some permission to construct any boundary wall without permission from the prescribed statutory authorities. Subject to this clarification, the undertaking on behalf of respondents 7 to 9 is accepted as an undertaking to this Court.

6. In our order dated 30 August 2024, in paragraph No.9, we recorded that 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 regularisable. Accordingly, now that respondents 7 to 9 have furnished the undertaking and Dr Warunjikar, on their behalf and, based on their instructions, has made a statement that the resort will not be commercially operated until regularisation, we direct ADTP to furnish a necessary preliminary report to the Collector within four weeks from today. A copy of such a report should also be filed in this Court.

7. We clarify that the resort will not be commercially operated until further orders from this Court in this petition. The undertaking refers to not operating the resort commercially until regularisation is granted. However, even if the regularisation is given, the authorities must place the same under cover of an affidavit in this Court. Upon consideration, the same necessary order can always be passed. Still, we do not want a situation where the executive authorities make some orders without the Court being informed and commercial operations commencing. Therefore, if and when any regularisation is given, Respondents 7 to 9

are granted leave to apply to this Court for vacation of the restraint now imposed by this interim order.

8. List these matters on 13 September 2024 as originally scheduled.

(Kamal Khata, J)

(M.S. Sonak, J)