



Darshan Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13626 OF 2024

Arun Sadanand Gupta and Ors. ...Petitioners
Versus
The Commissioner, Vasai Virar City Municipal Corporation and Ors. ...Respondents

Dr Sayed Ejaz A. Naqvi, for the Petitioners.
Ms Swati Sagvekar, for the Respondent – Corporation.
Ms Rupali Shinde, AGP, for the Respondent – State.

CORAM M.S. Sonak &
Kamal Khata, JJ.
DATED: 01 October 2024

PC:-

1. Heard Dr Naqvi for the petitioners and Ms Sagvekar for the Vasai Virar City Municipal Corporation (“**Corporation**”).
2. By this petition, the petitioners seek the following reliefs:-

“(i) Rule be issued;

(ii) The ‘Public Notice’ via banner issued and fixed on bill boards over the Petitioner’s land admeasuring of 21 acres spread over (Survey Nos. 22(2), 23(2), 24, 25(2), 26(2), 27(2)28(2), 29(2) and 30 lying at Mauje - Achole, Tal- Vasai, Dist. - - Palghar) by the Respondent No. 1’s office named Assitant Commisisoner, 'D' Ward, V.V.M.C. (Municipal Corporation), Virar, dated nill -- may be quashed and set a sided

and directed to removed the said 'banner' from 'Vijaylaxmi Colony' marked as EX-"O"

(iii). This Hon'ble Court be pleased to allow the writ petition and rule may be issued for preserving the residential premises on the 21 acers of land spread over the Survey Nos. 22(2), 23(2), 24, 25(2), 26(2), 27(2), 28(2), 29(2) and 30 lying at Mauje - Achole, Tal- Vasai, Dist. - Palghar.

(iv) the Respondent No. 1 and 2 may be restrained from carrying our demolitions as many students are residing in the structures, also it is not their parent's capacity to shift immediately as annual exams dates are scheduled to commence from third week of february 2025.

(v) This Hon. Court may allow the Petitioners to approach appropriate court for their claim of adverse Possession over their respective Portions of lands in the said unauthorised Vijalaxmi colony, Nalasopara East, Palghar.

(vi). THIS Hon'ble COurt may pleased to direct the V.V.M.C. (Municipal Corporation) to conduct time bound speedy survey of the residents the Structures and 'NUMBERS' of inhabitant in the unauthorized 'structures as per electoral list on the 21 acers of 'disputed land plot' belonging to the Petitioners, a reasonable time period may be allowed to exhaust available legal remedy as per their adverse posession and also allow them time period for making representation for regularization as per law.

(vii). Pending the Petition, the Respondent No. 1 and 3 be restrained to not to destroy or demolish the structures standing till fresh survey of occupants/ land claims is not decided by the Competent Court of law or authority.

(viii). The Respondent may be directed to preserve the evidences whether documentary or physical immovable evidences of the Petitioner's structures as their case is of adverse Possessions nature.

(ix). Ad interim mandatory stay in terms of prayer in prayer clause/s (ii), (iii), (iv) and (v) may be allowed.

(x). Any other further relieves in the circumstances as per discretion and inherent Powers of the Hon'ble Court."

3. Just today, vide Interim Application No. 13464 of 2024, occupants similar to the present petitioners sought relief

intended to thwart the demolition process pursuant to this Court's judgment and order dated 08 July 2024 in Writ Petition No. 15853 of 2022.

4. Dr Naqvi submits that the additional grounds raised in this petition are that the petitioners should be allowed to apply for regularisation and that they should be granted additional FSI so that they can construct buildings of ground plus five stories.

5. These additional reliefs are entirely misconceived, given the gross facts of this case. This is a matter where there was a large-scale encroachment on the property, which was reserved as a dumping ground and for setting up a sewage treatment plant by the Vasai Virar City Municipal Corporation. Without any permission from any authorities, illegal buildings were constructed on this property. The Corporation issued notices for the demolition of the patently unauthorised buildings. Despite notices, since the Corporation was not taking action to demolish, the property owners instituted Writ Petition No. 15853 of 2022, seeking a mandamus upon the Corporation to enforce its demolition orders/notices.

6. After hearing the matter in detail, including some interveners like the petitioners, Writ Petition No. 15853 of 2022 was disposed of vide judgment and order dated 08 July 2024. The statements on behalf of the Corporation about the execution of its demolition notices with police support were accepted and compliance reports were directed.

7. In Interim Application No. 13464 of 2024 taken out in Writ Petition No. 15853 of 2022, which is today disposed of, the intervention was sought in the disposed-of petition, and a prayer was made to dismiss the already disposed-of petition. The contentions raised by the applicants were not substantially different from those now raised. Therefore, we reject such contentions by adopting the reasoning in the order disposing of the above interim application.

8. In the present petition, the prayer is that the petitioner should be allowed to seek regularisation. Another prayer is that the FSI should be increased because the buildings in which the petitioners reside are only ground plus one or two stories. Now, they want to construct buildings with ground plus four or five stories as per the Regularisation of Unauthorised Development in the City of Ulhasnagar (Amendment) Act, 2022.

9. The Learned counsel for the petitioners admits that the above amendment act does not apply to the Vasai Virar City Municipal Corporation's jurisdiction. However, the contention is that we should direct the Legislature to enact a similar law so that there is no need to demolish the unauthorised buildings high-handedly put up on land reserved to treat municipal solid wastes and to set up a sewage treatment plant.

10. Such relief is entirely misconceived. It is not for this Court to direct the legislature to enact any law, and that too for the regularisation of patently unauthorised buildings by

increasing the FSI applicable to this area. The petitioners, who are encroachers and have put up or are the beneficiaries of patently unauthorised constructions have no right of regularisation. In any event, to insist that the State or the Corporation or the statutory authorities must now increase the FSI only so that the petitioners can increase the magnitude of their encroachments and illegalities is a shocking proposition which cannot be countenanced.

11. The petitioners claim to have purchased the flats from some builders or developers. The pleadings are sketchy. Nothing indicates how these builders or developers acquired any interest in the property reserved to treat municipal solid wastes and set up a sewage treatment plant. No permission from any authorities backs the construction. The constructions are not in zones or on the property where such constructions are permitted. There is no question of regularisation of such buildings. The petitioners can sue the builders and developers to recover the amounts paid or for damages.

12. Therefore, by adopting the reasoning in the order by which we have disposed of the Interim Application No. 13464 of 2024 and for the above reasons, we dismiss this petition without any orders for cost.

13. Learned counsel for the petitioners now seeks restraint on the Corporation from demolishing the illegal constructions for two weeks.

14. Again, for the reasons set out in our order made today disposing of the Interim Application No. 13464 of 2024, we express our inability to grant any such relief.

(Kamal Khata, J)

(M.S. Sonak, J)