

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14850 OF 2023

Sadanand Gangaram Kadam

...Petitioner

Versus

State of Maharashtra & Ors.

...Respondents

WITH
INTERIM APPLICATION NO.8869 OF 2024
IN
WRIT PETITION NO.14850 OF 2023

Sub Divisional Officer,
Taluka Dapoli, Dist. Ratnagiri

...Petitioner

IN THE MATTER BETWEEN

Sadanand Gangaram Kadam

...Petitioner

Versus

State of Maharashtra & Ors.

...Respondents

Mr. Saket Mone a/w Mr. Devansh Shah i/b Vidhii Partners, for the
Petitioner.

Mr. Rajiv Kumar, Special Counsel a/w Ms. R. A. Salunkhe, AGP, for the
Respondent-State.

CORAM: MADHAV J. JAMDAR, J.

DATED: 14 JUNE 2024

P.C.:

1. I have heard Mr. Saket Mone, learned Counsel for the Petitioner,

Mr. Rajiv Kumar, learned Special Counsel a/w Ms. R. A. Salunkhe, learned AGP, for the Respondent-State on earlier dates.

2. The challenge in this Writ Petition preferred under Article 227 of the Constitution of India is to the legality and validity of the Order dated 4th November 2023 passed by the learned Ad hoc District Judge-1, Khed, Taluka-Khed, District-Ratnagiri passed in Miscellaneous Civil Appeal No.08 of 2023 (“impugned Order”). By the said impugned Order the Miscellaneous Civil Appeal preferred by the Respondent-State of Maharashtra and others has been allowed by quashing and setting aside the Order dated 17th March 2023 passed below Exh.6 in Regular Civil Suit No.57 of 2021. The learned Civil Judge Senior Division, Khed, District-Ratnagiri by said Order dated 17th March 2023 passed below Exh.6 in Regular Civil Suit No.57 of 2021 restrained the Defendants i.e. State of Maharashtra and others from demolishing the structure erected on the suit property till the disposal of the Suit. Thus, injunction Order granted by the learned Trial Court till the disposal of the Suit has been set aside by the learned Appellate Court and the Petitioner in the present Writ Petition has impugned the said order.

3. The Petitioner has preferred the said Regular Civil Suit No.57 of 2021 *inter alia* seeking relief that the notice dated 22nd June 2021 issued by Sub-Divisional Officer, Dapoli as well as the actions taken pursuant thereon are illegal and be quashed and set aside.

4. It is the main contention of Mr. Mone, learned Counsel for the Petitioner that the action taken against the structure in question is for a *mala fide* purpose. He submitted that there is a political rivalry between the persons who are members of the political parties which are in power and one Mr. Anil Dattatray Parab who belongs to a party which is in opposition. He submitted that the Petitioner is closely associated with said Mr. Anil Parab. He submitted that therefore the impugned Order passed by the learned Ad hoc District Judge, is required to be quashed and set aside and the order of protection granted till the disposal of the Suit by the learned Trial Court is required to be restored.

5. However, the perusal of the record shows that the first permission issued by the Sarpanch, Nirmal Gram Panchayat, Murud, Taluka-Dapoli, District-Ratnagiri dated 26th February 2016 records that the permission has been granted to construct a hut. Thereafter, the second permission was granted by the Respondent No.2-Sub-Divisional Officer, Dapoli on 12th September 2017. Clause No.26 of the said permission records that the new building should consist of only a ground floor and a 1st floor. However, the Petitioner in violation of the said permission dated 12th September 2017 has constructed the 2nd floor. The notice dated 22nd June 2021 issued by the Respondent No.2-Sub-Divisional Officer, Dapoli calls upon the Petitioner to demolish the entire structure including the said 2nd floor illegal structure. In the said notice it is specifically

mentioned that the entire structure of said resort is in violation of CRZ Notifications and the said structure has been constructed without obtaining any permission as contemplated under the CRZ Notifications.

6. As it is an admitted position that construction of the 2nd floor is entirely illegal, the Petitioner has filed an Affidavit-cum-Undertaking dated 16th March 2024 and gave an undertaking to this Court that the structure on the 2nd floor would be demolished at his own expense within a period of 1 month from the order passed by this Court. The relevant portion of the undertaking dated 16th March 2024 is as follows:

“I am now filing the present Affidavit-cum-Undertaking in compliance of the directions passed by this Hon’ble Court on 13th March 2024. I hereby state and undertake that I shall demolish the excess portion of the resort which is in violation of the Order/Permission dated 12th September 2017 passed by the Sub-Divisional Officer, Dapoli Division, Dapoli at my own expenses, within a period of 1 (one) month from the date of an Order being passed by this Hon’ble Court in terms of the present Affidavit-cum-Undertaking.”

(Emphasis added)

Accordingly, this Court accepted the said undertaking and directed demolition of said 2nd floor structure on or before 15th April 2024. The paragraph No.4 of said Order dated 18th March 2024 is as follows:

“Accordingly, the said undertaking is accepted. The Petitioner is directed to demolish the excess portion of the Resort in question which is in violation of the Order/Permission dated 12th September 2017 passed by the Sub-Divisional Officer, Dapoli Division, Dapoli, at the Petitioner’s own expenses on or before 15th April 2024. It is expressly made clear that if the undertaking given to this court is not complied with, then

apart from other actions, the Petitioner will be liable for action under the Contempt of Courts Act, 1971 for violation of the undertaking given to this Court.”

(Emphasis added)

7. On 17th April 2024 Mr. Mone, learned Counsel for the Petitioner, on instructions stated that the Petitioner has complied with the undertaking given to this Court and the entire structure which has been built in excess of the permission dated 12th September 2017 given by the Respondent No.2 (i.e. entire 2nd floor structure) has been demolished. The relevant portion of the Order dated 17th April 2024 is as follows:

“Mr. Mone, learned Counsel for the Petitioner states that the Petitioner has complied with the undertaking given to this Court to demolish the structure in question which is in excess of Permission/Order dated 12th September 2017.”

8. However, the Respondent No.2-Sub-Divisional Officer, Taluka-Dapoli, District-Ratnagiri preferred Interim Application No.8869 of 2024 on 29th April 2024 seeking following prayer:

“(a) The Hon’ble Court be pleased to punish civil prison for a period of 6 months or such other period as this Hon’ble Court may deem fit and proper for having wilfully and intentionally committing a contempt of this Hon’ble Court by failing to demolish the illegal portion of the structure situated on gut no.446 at Murud and by wilfully and intentionally committing a breach of his undertaking dated 16th March 2024 of this Hon’ble Court by refusing to comply with his undertaking to demolish the 2nd floor of the structure Gat No.446;”

9. The above Interim Application came up before this Court on 2nd

May 2024 and Mr. Saket Mone, learned Counsel for the Petitioner, on instructions made a statement that said entire structure of the 2nd floor would be demolished within a period of 2 days. This Court passed the following Order on 2nd May 2024:

“1. Mr. Rajiv Kumar, learned Special Counsel for the Respondent-State submits that an undertaking which has been given to this Court by the Applicant undertaking to demolish the structure which is in violation of permission dated 12th September 2017 of Sub Divisional Officer, Dapoli is not complied with. To substantiate said contention, he points out photograph on page 35 of the Interim Application.

2. Mr. Saket Mane, learned Counsel for the original Petitioner, on instructions states that within a period of 2 days, the said entire structure on the 2nd floor will be demolished.”

10. On 10th May 2024 the Petitioner filed a further undertaking dated 10th May 2024 in this Court, paragraph Nos.1 and 2 of which read as under:

“1. I hereby tender my unconditional apology to this Hon’ble Court for not complying with the Order dated 18th March 2024 passed in the captioned matter read with my Affidavit-cum-Undertaking dated 16th March 2024 filed in the captioned matter. I state that I had no intention to disobey, overreach and / or commit breach of the orders of this Hon’ble Court, and the same was not wilful. I state that I have the utmost respect and faith in this Hon’ble Court. I undertake to pay costs of Rs.1,00,000/- (Rupees One Lakh Only) in the manner as directed by this Hon’ble Court, within a period of 1 (one) week from the date of an order being passed by this Hon’ble Court to that effect.

2. I hereby state that I have now demolished a substantial part of the entire excess portion (i.e. the 2nd floor) of the resort (i.e. the Subject Structure as defined in Paragraph 2 of the Writ Petition) which is in violation of the Order / Permission dated 12th September 2017 passed by the

Sub-Divisional Officer, Dapoli Division, Dapoli, in accordance with the Order dated 18th March 2024 passed in the captioned matter read with my Affidavit-cum-Undertaking dated 16th March 2024 filed in the captioned matter, save and except for the portion of the lift shaft that was permitted to be retained by this Hon'ble Court during the hearing held on 6th May 2024. I shall rely on the photographs at the time of hearing of the present matter. I state and undertake that I shall demolish the entire excess portion of the resort. The delay in demolition is entirely unintentional and I state that I fully intend to comply with the orders of the Court as also, the undertakings given by me."

11. This Court passed the following Order on 10th May 2024:

"1. At the outset, Mr. Mone, learned Counsel for the Petitioner states that the Petitioner is personally present in the Court and the Petitioner tenders an unconditional apology for not complying with the Order dated 18th March 2024. He states that as the demolition of the second floor of the structure is taking time due to several difficulties, there is some delay. However, the said demolition will be completed within a period of 10 days.

2. The Petitioner-Sadanand Kadam is personally present in the Court and the Petitioner also gives an undertaking to demolish the second floor of the structure in question within a period of 10 days.

3. Mr. Mone, learned Counsel for the Petitioner tenders Affidavit of an unconditional Apology-cum-Undertaking on behalf of the Petitioner dated 10th May 2014.

4. The Petitioner who is personally present in the Court also gives an undertaking in terms of said Affidavit-cum-Undertaking. Accordingly, all undertakings in said Affidavit-cum-Undertaking dated 10th May 2024 are accepted.

5. Stand over to 11th June 2024 at 2.30 p.m."

12. Today, Mr. Mone, learned Counsel for the Petitioner has filed the Affidavit of Compliance on behalf of the Petitioner dated 10th June

2024 and stated that the entire 2nd floor structure which was in violation of the Order/Permission dated 12th September 2017 issued by the Respondent No.2-Sub-Divisional Officer, Dapoli Division, Dapoli, save and except for the portion of the lift shaft, has been demolished.

13. During the pendency of the proceedings which is subject matter of this Writ Petition, an Office Memorandum dated 31st January 2022 has been issued by the Union of India, Ministry of Environment, Forest and Climate Change under Section 5 of the Environment (Protection) Act, 1986, *inter alia* directing that the said entire structure of the resort be demolished. The Petitioner has challenged said notice by filing Writ Petition No.11125 of 2022 which is pending in this Court before a Division Bench.

14. The said entire structure is also the subject matter of the present proceedings which are arising out of the Notice dated 22nd June 2021 issued by the Respondent No.2 for demolition of the entire structure *inter alia* on the ground that the same violates the CRZ Notifications. The documents on record clearly show that the said structure has been constructed without obtaining the permission and is in complete violation of the CRZ Notifications.

15. Mr. Mone, learned Counsel for the Petitioner states that the same issue is also pending before the Division Bench in Writ Petition No.11125 of 2022. However, it is to be noted that no ad interim relief

has been granted in favour of the Petitioner by the Division Bench in said Writ Petition.

16. The Petitioner has filed two Affidavit-cum-Undertakings dated 16th April 2024 and 10th May 2024 in this Court. The Petitioner in the first undertaking dated 16th April 2024 in paragraph No.3 has stated as follows:

“3. I am now filing the present further Affidavit-cum-Undertaking in compliance of the directions passed by this Hon’ble Court on 18th March 2024. I hereby state and undertake that I shall demolish the remaining / balance portion of the resort which is in violation of the Order / Permission dated 12th September 2017 passed by the Sub-Divisional Officer, Dapoli Division, Dapoli at my own expenses, subject to (i) the final outcome of the said Civil Writ Petition No.11125 of 2022 and challenge thereto (if any) and (ii) my rights and contentions in Regular Civil Suit No.57 of 2021 filed by me before the Ld. Civil Judge Senior Division, Khed, District Ratnagiri.”

In the second undertaking dated 10th May 2024 in paragraph No.4 the Petitioner has stated as follows:

“4. Without prejudice to my rights and contentions in Regular Civil Suit No.57 of 2021 filed by me before the Ld. Civil Judge Senior Division, Khed, District Ratnagiri, I hereby state and undertake that I shall demolish the resort at my own expenses in the event no protective / stay / interim order(s) in the said Civil Writ Petition No.11125 of 2022 and / or challenge thereto (if any) are passed on or before 31st July 2024.”

Thus, in effect the Petitioner has given undertaking to this Court that

the entire remaining structure of the resort will be demolished at the expense of the Petitioner if no protective orders are passed in the Civil Writ Petition No.11125 of 2022 on or before 31st July 2024.

17. It is required to be noted that the first permission was issued by Gram Panchayat on 26th February 2016 only for the purpose of construction of a hut. Thereafter in total violation of the CRZ Notifications, the second permission dated 12th September 2017 was issued by the Sub-Divisional Officer, Dapoli Division, Dapoli for constructing a Ground+First floor structure. In any case, the Petitioner has undertaken that if he fails to get any protective orders on or before 31st July 2024 in said Civil Writ Petition No.11125 of 2022, the entire structure of the resort shall be demolished. The said undertaking is accepted. If the Petitioner fails to get any relief in Civil Writ Petition No.11125 of 2022 of protecting the said structure of the resort in question by 31st July 2024, then the entire structure of the said resort to be demolished on or before 31st August 2024.

18. It is required to be noted that one of the main contention raised by Mr. Mone, learned Counsel for the Petitioner is that the entire action has been taken for a *mala fide* purpose due to political rivalries. It is his submission that there are several influential persons who have constructed various structures contrary to and in violation of the CRZ Notifications in the same vicinity. It is unfortunate that the State of

Maharashtra has filed an additional Affidavit dated 5th February 2024 placing on record its actions taken with respect to such other structures. However, Mr. Mone, learned Counsel for the Petitioner is right in pointing out that the said additional Affidavit is completely silent regarding action taken against the illegal structures built by influential persons. He is also right in pointing out that the learned Trial Court granted interim protection till disposal of the Suit by the Order dated 17th March 2023 and the State of Maharashtra has challenged the said Order with great speed within a period of less than two weeks i.e. on 29th March 2023. It is very well known that Appeals are generally filed by the State Government after a considerable delay. Thus, it is clear that the action taken by the State Government is malicious. However, as already noted herein above the entire structure is illegal, unauthorised, and in violation of the CRZ Notifications and the same cannot be protected by the Court only on the ground of *mala fides*. Mr. Mone, learned Counsel has not even argued that the structure of the resort in question does not violate the CRZ Notifications. It is expected that the State Government will also take action against other illegal structures of influential persons in the vicinity.

19. The Petitioner has filed an Affidavit/Undertaking dated 10th May 2024 tendering an unconditional apology for violation of the undertaking given to this Court on 16th March 2024 and also Order

dated 18th March 2024, and showing willingness to pay cost of Rs.1,00,000/- as he is in contempt of this Court, having violated the undertaking dated 16th March 2024 given to this Court. It is required to be noted that thereafter the Petitioner has completely demolished the said 2nd floor structure as noted in the earlier part of this Order.

20. Accordingly, an unconditional apology tendered by the Petitioner as set out in the Affidavit/Undertaking dated 10th May 2024 is accepted.

21. As far as the cost is concerned, it is indicated that the cost would be directed to be deposited in the account of all Taluka Bar Associations in Ratnagiri district as well as Ratnagiri District Bar Association in equal proportion for purchase of law books. Mr. Mone, learned Counsel for the Petitioner states that as said cost is to be paid to all Taluka Bar Associations of District-Ratnagiri as well as Ratnagiri District Bar Association, he has instructions that the Petitioner will provide one new computer along with one printer to each Taluka Bar Association [i.e. Taluka Bar Associations of Talukas Khed, Chiplun, Dapoli, Mandangad, Guhagar, Deorukh, Lanja, and Rajapur] as well as to the Ratnagiri District Bar Association. Accordingly, the said statement made by Mr. Mone, learned Counsel on behalf of the Petitioner is accepted. The Petitioner to comply with said statement on or before 31st July 2024.

22. Accordingly, the Writ Petition is disposed of in above terms.

23. In view of disposal of the Writ Petition, nothing survives in the Interim Application and the same is also disposed of.

[MADHAV J. JAMDAR, J.]