

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 9774 OF 2024
IN
WRIT PETITION NO. 15853 OF 2022

Bashist Kumar Vishwakarma & Ors	...Applicants
<i>In the matter between</i>	
Mohan Sukhlal Patel & Ors	...Petitioners
<i>Versus</i>	
The State of Maharashtra & Ors	...Respondents

Mr Ajay Jaiswal, *for the Applicant in IA/9774/2024.*
Dr Uday Warunjikar, *with Aditya P Kharkar, for the Respondent in*
IA and Original Petitioner in Writ Petition.
Ms Swati Sagvekar, *for the Respondent-VVMC.*
Mr SL Babar, AGP, *for the Respondent-State.*

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

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1. Heard learned Counsel Mr Ajay Jaiswal for the Applicant in Interim Application No. 6042 of 2024. Mr Warunjikar learned Counsel for the Original Petitioner and Ms Swati Sagvekar, learned Counsel for the Respondent- Vasai Virar City Municipal

Corporation (“VVCMC”) and Mr SL Babar, learned AGP for the Respondent-State.

2. We have heard the learned Counsel for the Applicant in the Interim Application and the learned Counsel for the Original Petitioner in the main Petition since we propose to dispose of the Interim Application and the main Petition by this order.

3. The main Writ Petition was instituted by the Petitioners claiming the following substantive reliefs:

“(a) Be pleased to issue a writ of mandamus or in the nature of mandamus directing the Respondents herein to take steps and action against the illegal & unauthorized construction in respect of property of the petitioners more particularly mentioned in paragraph no. 2 of the present petition within such time as this Hon’ble Court may deem fit and proper.

(b) Be pleased to direct the Respondent No. 1 to initiate appropriate disciplinary action against the officers of the Respondent no. 2 and the Respondent No. 3 in person and in furtherance of the same, be pleased to fix the liability upon these officers and take exemplary action in this regard;

(c) In addition, be pleased to take severe exemplary action against the officers of the Respondent No. 2 and 3 and to impose hefty costs against them;

(d) In addition, be pleased to initiate action against the competent officers of the Respondent No. 2 under section

56A of the Maharashtra Regional and Town Planning Act, 1966.

(e) Any other reliefs as this Hon'ble High Court deems fit."

4. Given the issues raised in the petition, this Court issued a notice for final disposal at the admission stage on 6 January 2023, returnable on 3 February 2023.

5. The Petitioners' grievance in the main Petition was that a site specifically reserved for a sewage treatment plant and dumping ground was constructed upon without any permission from authorities. Still, none of the authorities, including VVCMC, were interested in taking serious action against such unauthorised construction at the site.

6. The record shows that VVCMC issued show-cause notices on 30 July 2021 to several parties, including the intervenors. However, the Petitioners alleged that VVCMC was not even serious about pursuing this notice.

7. Ms Sagvekar, learned Counsel for the Respondent Corporation, pointed out that the VVCMC was very much interested in pursuing the show-cause notices because, according to VVCMC, the unauthorised constructions were, on site, reserved for a sewage treatment plant and dumping ground. She submitted that this site was necessary for VVCMC to set up a sewage treatment plant and dumping ground. However, while the property was under

the control of CIDCO, these illegal constructions came up without obtaining any permission from any authority.

8. Ms Sagvekar pointed out that show-cause notices dated 30 July 2021 were, in fact, stayed at the behest of some of the affected parties. However, it was only after the corporation presented the correct facts to the Court and the stay was vacated that the corporation initiated further action to demolish these buildings.

9. Learned Counsel for the Intervenor submits that they have purchased the units in these buildings from the developer. He submits that the developer told the Intervenors that these structures are legal and authorised. Learned Counsel for the Intervenor states that even the agreements with the developer were registered. He pointed out even the Petitioners had entered into registered agreements with the developer. For all the above reasons, the learned Counsel for the Intervenor submitted the intervention should be allowed, and the action of the VVCMC in proceeding with the demolition should be stayed.

10. On 15th January 2024, the coordinate Bench comprising GS Patel and Kamal Khata JJ made the following order:

“1. We expect a responsible affidavit from Respondent Nos 3 and 4 because the case of the Petitioners is specifically that on the site in question, on which a sewage treatment plant and dumping ground are proposed within the limits of the Vasai

Virar City Municipal Corporation (“VVCMC”), there are not one or two but as many as 41 buildings already constructed, every one of them unauthorised.

2. Ms Sagvekar for Respondent Nos 2 and 3 has very limited instructions today, and we do not think it would be appropriate to note those at this stage until she has had time to take proper instructions and file an Affidavit. But in that Affidavit, we expect to see some sort of response as to how these buildings came up and, if after the formation of the VVCMC, they have been found to be illegal, what steps the Corporation has taken in law against these buildings. That Affidavit is to be filed and served by 31st January 2024.

3. List the matter on 7th February 2024.”

11. On 26th June 2024, we clarified that the pendency of this Petition should not be an impediment for the VVCMC to proceed with the action in terms of the law. On that date, Learned Counsel for the VVCMC stated that police protection had been applied for to implement the demolition orders.

12. Most of the reliefs in the Petition have been worked out. The VVCMC demonstrated its seriousness in proceeding with the action. Learned Counsel for the VVCMC points out that some of the illegal and unauthorised buildings have already been demolished. She points out that action will continue to demolish all the illegal

constructions that have come up on the site reserved for a sewage treatment plant and dumping ground.

13. Since the main relief in the Petition was to direct the VVCMC to take action against illegal constructions on the site reserved for the sewage treatment plant and the dumping ground, and since the VVCMC is proceeding with the action, there is no point in keeping this Petition pending.

14. The Petitioner's relief for disciplinary proceedings against the officials does not warrant consideration, at least in the facts of the present case. Ms Sagvekar pointed out that these constructions came up when CIDCO controlled the property. She also pointed out how notices were issued that notices could not be implemented because of court proceedings and interim reliefs. She pointed out how efforts were made to vacate the interim reliefs, and no sooner the interim reliefs were vacated, the VVCMC proceeded with the action of removing the illegal and unauthorised buildings.

15. As far as the Intervenors are concerned, the relief they seek cannot be claimed by seeking intervention. Secondly, the learned Counsel for the intervenors could not show that the buildings they occupy were constructed with any permission from any authorities. Admittedly, the buildings have been placed on site reserved for setting up a sewage treatment plant and a dumping ground. The sewage treatment plant and a dumping ground are, in fact, essential civic amenities, and such land cannot be used by any party to the detriment of the civic interest of all others in the locality.

16. The fact that Intervenors may have agreements or that the Petitioners may also have executed some registered agreements with the developer is not a good ground to protect wholly unauthorised constructions. The Intervenors are free to sue the builder, developer or any other persons for recovering damages. However, based on such registered agreements, if any, there is no question of protecting the wholly illegal and unauthorised structures.

17. In the Intervention Application, there was no reference to the 2021 notices that were served upon the Intervenors. A case was sought to be made out as if demolitions had been ordered without compliance with natural justice. The record shows that full opportunity was given only after it was clear that constructions were wholly unauthorised and put up at a site reserved for a sewage treatment plant and dumping ground for the demolitions had been ordered.

18. For all the above reasons, we dismiss the Intervention Applications and the reliefs sought therein and dispose of the Writ Petition.

19. However, even though we are disposing of the Writ Petition, we direct the VVCMC to file a compliance report in this Court about the action to demolish the illegal constructions on the site meant for the sewage treatment plant and dumping ground.

20. At this stage, the learned Counsel for the Intervenors seeks time until 30th September 2024 to vacate the premises and facilitate

the demolition. However, to the Court's query as to whether the occupants will file undertakings, he seeks some time to obtain instructions. Considering the ongoing monsoon period, we direct the VVCMC not to execute its demolition orders until 30th September 2024, provided within a month from today, the Applicants give an undertaking that they would vacate the premises by 30th September 2024. Copies of such undertakings should be furnished to VVCMC before they are filed in this Court.

21. Further, we restrain the Applicants from transferring or creating any third-party rights until they vacate the premises by 30 September 2024.

22. The VVCMC should file and serve its compliance report in this Court by 30th October 2024.

23. The Interim Application and Writ Petition is disposed of in the above terms. There shall be no order for costs.

24. All concerned are to act on an authenticated copy of this order.

(Kamal Khata, J)

(M.S. Sonak, J)