



Darshan Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 13464 OF 2024
IN
WRIT PETITION NO. 15853 OF 2022

Arun Sadanand Gupta ...Applicant
In the matter between
Mohanlal Sukhlal Patel and Ors. ...Petitioners
Versus
The State of Maharashtra and Ors. ...Respondents

Dr Naqvi Sayed Ejaz Abbas, for the Applicant.
Adv Jenish Dinesh Jain, a/w Dattaram Bile h/f Aditya Kharkar,
for the Petitioners.
Ms Swati Sagvekar, for the Respondent – Vasai Virar City
Municipal Corporation.
Ms Rupali Shinde, AGP, for the Respondents 1 and 4 – State.

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

PC:-

1. Not on board. Upon mentioning taken on board.
2. Heard Dr Naqvi and Ms Sagvekar for Vasai Virar City Municipal Corporation (“Corporation”).

3. By this application, the applicant seeks following reliefs:-

“(i) Applicant may be allowed to interven in the mentioned Petition;

(ii) Petition may be dismissed with heavy cost for suppressing the vital information viz. area of ownership is missing from the entire body of the Petition.

(iii) The public notice via banner issued by the Respondent No.1's office named Assistant Commissioner, 'D' Ward, VVMC, Virar, dated nill -- may be quashed and set a sided and directed to removed the said 'banner' from 'Vijaylaxmi Colony' marked as EX-”O”

(iv) This Hon'ble Court be pleased to allow the Application and rule may be issued for preserving the residential premises and the studying students/ sick/ patients/ widows living in the structures as their economic situations are extremely worst, and not able to shift immediately as annual exams dates are scheduled to commence from third week of february 2025.

(v) This Hon. Court may allow the Applicant 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 VVMC to conduct speedy time bound survey of the exiting residents the Structures and 'Numbers' of inhabitant in the authorised and unauthorized 'structures as per electoral list on the 21 acers of 'undisputed land plot' belonging to the Applicant and his partners, other stake holders and companies and allow him/them to approach court as per their adverse posession and also allow them time period for making representation as per rule of law.

(vii) Pending the Applicant, the Respondent No. 1, 2 and 3 be restrained to not to destroy or demolish the structures standing till fresh survey of land claims of Mohanlal Sukhlal Patel on particular patch area.

(viii) The Respondent may be directed to preserve the evidences whether documentary or physical immovable evidences of the Applicant'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) The Applicant prays the he and other occupants may be allowed reasonable time for proper survey of structures and TLR and for pursuing application for regularization before execution of the demolition order dated 26/06/24.

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

4. Dr Naqvi submits that the petitioner in the Civil Writ Petition has given no particulars and, based on vague averments, has applied for relief of demolition of constructions of the building in which the applicant resides. He submitted that though none of the buildings have permission from any authorities, there are "*ways and means*" to get such buildings regularised. He submits that the applicant must be allowed to explore such "*ways and means*" by stopping the demolitions.

5. Dr Naqvi further submits that the petitioners have been occupying the buildings for the last 25 years and, therefore, should have the benefit of "*adverse possession*." Dr Naqvi stated that the applicant is not requesting any mercy because, according to the applicant, he has a right by way of "*adverse possession*."

6. Finally, Dr Naqvi submits that several students reside in the building, and the demolition of these buildings would be harsh and disproportionate. Based on these arguments, Dr Naqvi submits that the reliefs applied for in this application may be granted.

7. Ms Sagvekar, learned counsel for the Corporation, submits that this application is frivolous. She submits that for the last two months, ample notices were given to all the residents about this Court's order dated 08 July 2024, by which Writ Petition No. 15853 of 2022 was already disposed of. She submitted that the buildings that are now demolished are patently unauthorised construction put up on the site reserved for a sewage treatment plant and a municipal solid waste facility. She submitted that the Corporation required this site to set up the sewage treatment plant and the dumping ground. The site was encroached upon before these projects could be set up, and these illegal constructions were put up. She, therefore, submits that this application may be dismissed.

8. This application is quite misconceived, according to us. Firstly, there is no question of seeking intervention by means of an interim application in a petition that this court has already disposed of by its judgment and order dated 08 July 2024.

9. Secondly, the argument that the original petitioners did not give any particulars is also misconceived. All particulars were furnished. Apart from the petitioners, the Corporation admitted that the site was reserved for the sewage treatment plant and dumping ground. Still, the site was high-handedly encroached upon, and illegal constructions were put up, thereby stalling the sewage treatment plant project and dumping ground.

10. By judgment and order dated 08 July 2024, the illegal constructions were directed to be demolished. Even in that petition, some interveners tried to intervene in the matter and raised arguments similar to those now raised by Dr Naqvi on behalf of the present applicant.

11. The argument about “*ways and means*” to regularise such structures must also be rejected. It is not the law of this land that public spaces or even private spaces should be high-handedly encroached upon and built upon without permission from any authorities. Though Dr Naqvi was not prepared to elaborate on what he meant by “ways and means”, as a writ court, we would not like to encourage such ways and means for the regularisation of patently unauthorised buildings constructed completely disregarding the law.

12. Learned counsel Dr Naqvi submitted that the site in question is not a public but a private space. If this is so, we fail to see how an unauthorised construction on such private property can be authorised without the consent of private parties. Besides, admittedly, this property was reserved for the Corporation to set up the sewage treatment plant and dumping ground. This is undoubtedly a public amenity. By encroaching and constructing unauthorisedly upon such a property, the members of the public have been deprived of the significant amenity.

13. Therefore, on the ground that there are always “*ways and means*” to get unauthorised construction regularised, no relief can be granted in this application. Such an approach is

against the several decisions of the Hon'ble Supreme Court concerning the regularisation of patently unauthorised constructions.

14. Finally, we reject the argument based on the plea of adverse position. The argument is misconceived. Based on such an argument, municipal laws cannot be breached with impunity. Admittedly, there are no permissions from any authorities. There are no pleadings worth the name to sustain this plea, which Dr Naqvi has flung across the bar. In any event, such a plea does not protect patently unauthorised constructions on a space reserved for setting up a sewage treatment plant and the dumping ground for the corporation.

15. Regarding the argument of students or hardship, naturally, we have our sympathies. However, based only on sympathies, we cannot deviate from the law in the gross facts of this case. Based on undertakings given by the occupants who had applied to this Court much earlier, we had deferred the demolitions until the conclusion of the monsoons, i.e., until 30 September 2024. All the occupants got the benefit of this deferment. There was substantial time for making alternate arrangements.

16. Some interveners argued the matter on grounds similar to those now raised by Dr Naqvi, or rather, the grounds that there had been agreements to purchase apartments and, consequently, they were bonafide purchasers. No relief was granted in that intervention application.

17. Yet another set of occupants approached this court and persuaded us to defer action until the end of September 2024. Those applicants also gave undertakings to vacate the premises. Based on such undertakings, all the demolitions were deferred. Now that all arrangements have been made for the demolitions, such a frivolous application has been filed.

18. For all the above reasons, we dismiss this interim application without any orders for costs.

19. At this stage, learned counsel for the applicant seeks interim relief for two weeks to restrain the corporation from proceeding with its action against the buildings.

20. As noted earlier, this application was entirely misconceived. Mr Sagvekar states that all arrangements have been made for demolition. She pointed out that for the last two months, public notices have been posted at the site, and repeated announcements have been made. Considering all these factors, we decline the relief now prayed for.

(Kamal Khata, J)

(M. S. Sonak, J)