

Prajakta Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2940 OF 2024

M/s. Ravi Developments

...Petitioner

Vs.

Municipal Commissioner, Mira Bhayander

Municipal Corporation & Ors.

...Respondents

Mr. Vishal Kanade with Ms. Aakanksha Agarwal, Mr. Manish Bohra, Ms. Kiran Choudhary and Ms. Riddhi Shah for the Petitioner.

Mr. Mayuresh Lagu i/b. Mr. Sagar Patil for Respondent Nos.1, 2 & 4.

CORAM: G. S. KULKARNI &
ARIF S. DOCTOR, JJ.
DATE: 01 JULY 2025.

P.C.

1. We have heard Mr. Kanade, learned counsel for the petitioner and Mr. Lagu, learned counsel for the respondent/Mira Bhayander Municipal Corporation (for short, “**MBMC**”).

2. This petition under Article 226 of the Constitution of India is filed praying for the following substantive reliefs:-

“(a) that this Hon’ble Court be pleased to issue a writ of certiorari or any other writ, order or direction in the nature of certiorari calling for the records and proceedings in respect of issuance of letter dated 11.11.2020 & 09.10.2023 mentioned in Exhibit X and Exhibit Z respectively by Respondent No.4 and after going through legality, validity and propriety thereof, the same be pleased to quash and set aside.

(b) That this Hon’ble Court be pleased to declare that Petitioners’ Application for sanction of revised plan dated 03.11.2020 is deemed to have been sanctioned in view of section 44 of MRTP Act.

(c) that this Hon’ble Court be pleased to issue a writ of mandamus or any other writ, order or direction in the nature mandamus directing Respondent Nos. 1 to 4 to:

i) issue a letter of approval of planning permission to the

Petitioner's revised proposal dated 03.11.2020;

ii) to cancel and/or withdraw the impugned letter dated 11.11.2020 & 09.10.2023.”

3. The development in question as proposed by the petitioner has some history not only in terms of notices issued to the petitioner by the MBMC, but also on litigation. The petitioner earlier approached this Court in Writ Petition No. 10205 of 2022 which came to be decided by a co-ordinate Bench of this Court (Coram: S. B. Shukre and M. W. Chandwani, JJ.) by an order dated 10 January 2023, whereby the Municipal Commissioner was directed to undertake adjudication on the communication impugned therein namely the stop work notice dated 27 February 2022. The operative part of the said order is required to be noted, which reads thus:-

“7. The Petition is partly allowed accordingly on the following directions :-

(i) Respondent No. 1 is directed to render adjudication upon the impugned communication which is stated to be a notice issued under Section 54 of the MRTP Act after taking into consideration reply of the Petitioner dated 23.02.2022 and after giving liberty of hearing to the Petitioner, as expeditiously as possible and preferably from the date of appearance of the Petitioner before Respondent No. 1. The Petitioner shall appear before Respondent No. 1 on 23.02.2023.

8. Rule is made absolute in the above terms. The Petition is disposed of accordingly.”

4. The grievance of the petitioner in the present petition as also seen from the prayers is in regard to the communication dated 11 November 2020 which calls upon the petitioner's architect to submit several documents in order to process the petitioner's proposal for undertaking construction on the lands in question which appear to be 16 plots of land at Village Ghodbunder and Village Navghar. The

said communication reads thus:-

“(Translation of a photocopy of a LETTER, typewritten in Marathi.)

Exhibit “ X ”

MIRA BHAYANDAR MUNICIPAL CORPORATION

Office Address : Swami Vivikanand Bhavan, Next to R. B. K. School,
Kanakia, Mira Road East, Taluka Mira Bhayandar, District Thane – 401 107,
Telephone No. 022 28121455

Email – ID : mbmc-tp@gmail.com

O. No. : M. C./T.P./1660/2020-21

Date : 11.11.2020

To,
Anish and Asso.
Shop Nos. 1 and 2, Bhairav Shruti,
Bhayandar (W).

Subject : - Regarding a revised proposal in pursuance of the
Building Permission granted vide Letter bearing
O.No. M. C./T.P./7514/ 2018-19, dated 30.03.2019
in respect of the consolidated land, situated at
Village – Ghodbunder and Navghar.

Reference : - Government Order bearing No. TPS – 1220/ 671/M.
No. 68/20/UD – 12, dated 05.10.2020.

Sir,

In connection with the Government Order under reference on the above mentioned subject, you have submitted a proposal in respect of the consolidated land, situated at Village Ghodbunder and Navghar together with the comprehensive documents viz. the registered documents in respect of ownership right to the land, No Objection Certificates of Heirs, Tenants' Settlements, No Objection Certificate issued by the U. L. C. Department, No Objection Certificate issued by the Environment Department, Title Search Report as well the documents in respect of R. G. area in the sanctioned layout and keeping intact the said area and excluding the land standing in the name of Government etc. as per the provisions prescribed in the sanctioned Development Control Regulation and therefore, steps shall be taken for granting permission to the said proposal on merit.

Signature

Dilip Ghevare

I/c. Assistant Director, Town Planning
Mira Bhayandar Municipal Corporation”

5. The second challenge of the petitioner is to a communication dated 09 October 2023 issued by the Assistant Director, Town Planning, Mira Bhayandar

Municipal Corporation, whereby, for detailed reasons as recorded in the said communication, it has been held that the construction which is sought to be continued by the petitioner, is not in accordance with law and therefore, the said construction should be stopped and written compliance in that regard be informed to the petitioner, and in the event such compliance is not communicated, the petitioner would be required to be placed in the list of blacklisted contractors/developers. The impugned communication is self explanatory, the contents of which are required to be noted, which read thus:-

“(Official Translation of a photocopy of a LETTER, typewritten in Marathi)

MIRA BHAINNDAR MUNICIPAL CORPORATION

Office: Swami Vivekanand Bhavan, next to R. B. K. School, Kanakia,

Mira Road (East), Tal. Dist. Thane – 401107.
Telephone: 022-28121455 Email ID: tp@mbmc.gov.in

Town Planning Department

No. MB/MC/TP/2104/2023-2024

Date: 9/10/2023.

To,

1) M/s. Anish and Asso. (Consultant Engineer),
First and Second Floor, Ramdev Esquire,
Deepak Hospital Road,
Bhaindar (East), Thane – 401 105.
a_anish21@yahoo.in

2) M/s. Ravi Development (Developer)
Laxmi Plaza, 76, Mathuradas Road,
Kandivali (East), Mumbai.

Subject: Regarding reviving the Building Permission granted vide letter bearing Outward No. MC/TP/7514/2018-19 dated 30/03/2019 and also issuing 'Letter of Intent' for obtaining No Objection Certificate from the Environment Department for the proposed consolidated Map in respect of the consolidated land bearing Survey Nos. 81/1, 2, 3 Part, 5, 6; 2) Survey Nos. 27/8, 9; 3) Survey Nos. 27/1, 10A, 2 and Survey Nos. 28/5, 29/3;

4) Survey Nos. 83/1, 2; 85/1/1A; 5) Survey Nos. 86/1, 3, 4, 8A, 8B, 8C and Survey Nos. 87/1A Part, 1B, 1C, 1D, 2 and Survey Nos. 88/1/1, 1/3, Survey Nos. 89/1, 3; Survey Nos. 105/1, 2; Survey No. 225 Part; 6) Survey Nos. 72/2, 73/1, 2, 3, 4, 74/1, 2, 75/1, 79/1, 3, 4; 7) Survey No. 82 together with newly included Survey No. 26/1; Survey Nos. 27/3, 5, 6, 7; 28/1, 2 (Part), 3 (Part); 29/1; 30/7 (Part), 8 (Part); 41/4A; 43/2, 4, 5, 6; 55/2; 56/8; 63/1, 2, 3, 4, 6-B, 7, 8, 9; 64/1, 2, 3, 4; 67/1, 2; 68/1, 2, 3; 70/1, 2; 81/4B; 224(Part); 225(Part); 232/1A, 1B, 1C, 2A, 2B; 234/1, situated at Village Ghodbandar / Navghar and Survey Nos./Hissa Nos. Bearing 1) Survey Nos. 92 (Part), 93, 94, 95 (Part) (Old Survey Nos. 430 (Part), 431, 432, 433 (Part)); 2) Survey No. 128 (Old 444/5); 3) Survey No. 127 (Old 443)/1 (Part), 1 (Part); 4) Survey Nos. 106 (Old 419), 116 (420)/1, 2, 3; 117 (Old 421)/1, 2, 3A, 3B, 4, 5, 6; 103 (Old 422)/1, 3(Part), 4, 5, 6, 7, 8, 9, 10, 11; 105 (Old 423)/2, 3, 4, 5 (Part), 5 (Part), 5 (Part); 5) Survey No. 96 (Old 429)/2; 6) Survey No. 96 (Old 429)/5; 7) Survey Nos. 435 Part, 436/2, 437/1 to 11, Survey Nos. 438/1 to 3, 6, 439/1 to 6, 8, 440/1, 3 to 8, 11, 12, 13; 8) Survey Nos. 127 (Old 443)/2 (Part), 128 (Old 444)/1, 3; 126 (Old 418)/2, 3, 4; 124 (Old 417)/7; 9) Survey No. 447 (Old 142)/4 as well as newly included Survey Nos. 105 (Old 423)/1, 98 (Old 428)/3, 96 (Old 429)/1, 3; 95 (Old 430)/1; 107 (Old 436)/3; 115 (Old 442)/1 to 5B; 130 (Old 446)/1 (Part), 2; 142 (Old 444)/4; 447/3, 5, situated at Village Navghar.

Reference : Proposal under No. RG/815, dated 03.08.2023, submitted by the Consultant Engineer Messrs Anish and Associates.

Sir,

As regards the consolidated land under the subject, earlier, pursuant to the Proposal dated 19.07.2018 submitted by the Consultant Engineer viz. Messrs Anish and Associates on behalf of the Developer - Messrs Ravi Developments, by the letter bearing No. M.C./T.P./7514/18-19, dated 30.03.2019, the Mira-Bhaindar Municipal Corporation, after mentioning the necessary terms and conditions on the basis of the Undertaking submitted by the Developer concerned, has granted Revised Building Permission along with granting approval to the plans.

Under the said Building Permission, a consolidated approval was granted by including therein new plots of land together with in all 17 sanctioned lay-outs from the revenue villages viz. Village – Navghar and Ghodbunder, falling within the limits of Mira- Bhaindar Municipal Corporation.

In the said Building Permission dated 30.03.2019, a Building Permission up to the plinth, by including therein necessary terms and Conditions, was granted to the new proposed buildings together with regularising the additional construction in the buildings shown in the old existing lay-out.

The Building Permission dated 30.03.2019 consisted some of the significant conditions such as to submit No Objection Certificate from the Estate Investment Company, to submit No Objection Certificate in pursuance of the Order under Section 20 issued by the U.L.C. Department, to hand over the roads and the reservations under the Development Scheme to the Municipal Corporation under duly registered Agreements and to make entry in the 7/12 extracts in respect thereof, to produce the Charter, Non-agricultural permissions issued by the Revenue Department for newly included lands, to produce revised No Objection Certificate issued by the Environment Department, to produce Survey Map issued by the Deputy Superintendent of Land Records, Thane, etc..

After the Building Permission was granted in the said matter, in view of the objections in respect of the ownership of the said lands, the Municipal Corporation, under its order under the letter bearing No. Municipal Corporation/Town Planning/1335/2019-20, dated 17.06.2019, has cancelled the Building Permission dated 30.03.2019, by following the 'Due Process of Law'.

Thereafter, when the Developer Messrs Ravi Development challenged the Order dated 17.06.2019 by preferring an appeal under Section 47 of the Maharashtra Regional and Town Planning Act, 1966, before the Government, the State Government has passed the Order on the date 21.09.2020 in the said appeal. The said decision has been received by the Municipal Corporation under the letter dated 05.10.2020, received from the Government.

By the said Order, the State Government has partially allowed the appeal filed by the Developer Messrs Ravi Development and has thereby directed the Municipal Corporation to grant approval as per the prevailing Development Control Regulation within 15 days, by excluding the plots of land in dispute from the Building Permission that was granted on the date 30.03.2019. However, even after passing of the said order, the Developer concerned has failed to submit a comprehensive proposal within the prescribed time limit.

Thereafter, in view of the Government's Order dated 21.09.2020 (Government's Letter dated 05.10.2020), M/s. Anish and Associates, the Consultant Engineer on behalf of the Developer M/s. Ravi Development submitted proposals on the dates 19.01.2023 and 16.03.2023 to the Town Planning Department of the Municipal Corporation for granting revised sanction by excluding the land in dispute and after carrying out preliminary scrutiny of the said proposals, the Consultant Engineer of the Proposal has been informed to comply with the necessary documents mentioned at Sr.No. 01 to 20 in the Letter dated 29.03.2023.

In pursuance of the said letter, M/s. Ravi Development has submitted reply vide their letter dated 26.04.2023. However, as the said reply is very vague in nature and as the same has been submitted without producing the documents that have been demanded, the said reply has not been accepted and by the letter dated 08.06.2023, the said Developer has been informed to submit the comprehensive proposal by complying with the documents mentioned in the letter dated 29.03.2023 of the Municipal Corporation, within next 15 days. However, even after the said letter, the Developer, M/s. Ravi Development and its Consultant Engineer M/s. Anish and Associates have not submitted a comprehensive proposal, to the Mira Bhaindar Municipal Corporation.

Thereafter, by the Letter No. MC/T.P./1129/2023-24 dated 03.07.2023 from the Mira Bhaindar Municipal Corporation, the Proposals dated 19.01.2023 and 16.03.2023 submitted by M/s. Anish and Associates, Consultant Engineer for the Project, have been rejected and the matter has been disposed of.

In the present situation, M/s. Anish and Associates, the Consultant Engineer on behalf of the Developer M/s. Ravi Development has submitted proposal on the date 03.08.2023 to this Office requesting therein to revive the proposal dated 30.03.2019 in respect of the land in dispute and to issue "Letter of Intent" (LOI) for the remaining consolidated land by excluding the land in dispute in the above-mentioned proposal, for seeking No-objection Certificate from the Environment Department.

In connection therewith, you are hereby informed that thereafter, by the Letter bearing Outward No. MC/T.P./2978/2019-20 dated 22.08.2019, revised building permission has been granted for the land bearing S.No.430 Part, 431, 432, 433 part, 92 part, 93, 94 part situated at village Navghar as mentioned in the Sanctioned Layout dated 30.03.2019 and the said permission has been granted to other Developer separately after the order dated 17.06.2019 of cancellation of the building permission.

In addition to this, on considering the letter dated 03.07.2023 from the Town Planning Department of the Municipal Corporation regarding rejecting permission, it is found that you have not yet complied with the documents mentioned in the said letter and that therefore, it is not technically possible to revive the building permission dated 30.03.2019 by excluding the land in dispute. In the sanctioned Layout dated 30.03.2019 in this matter, as the floor space index has been calculated by taking into consideration the consolidated plot of land, it is necessary to calculate the floor space index on the remaining plot of land by excluding the land in dispute and therefore, it would not be reasonable to revive the building permission by retaining the said maps intact, which may be noted.

With a view to obtain Letter of Intent for seeking No Objection Certificate from the Environment Department in respect of the land under subject, it is expected from you to submit the comprehensive proposal together with the main documents viz. up-to-date 7/12 extracts of the said land and the registered Development Agreements/ General Power of Attorney/ Sale Deed in respect of the said land together with the up-to-date Title and Search Certificate of the said land, up-to-date Survey Map issued by the Deputy Superintendent, Land Records, Thane, showing boundaries of the said land, Maps in the scale of 1:4000 in respect of CRZ, as per the Notification of the year 2019 issued by the MCZMA Authority, No Objection Certificate from the Environment Department for the previously approved Layout, up-to-date No Objection Certificate from the Fire Department etc.

At present, the developer of the proposal M/s. Ravi Development, has continued the construction work at the site by presuming that the construction permission sanctioned on the date 30.03.2019 is in force, which is not in accordance with the Rules. Therefore, being the Developer of the proposal, you should immediately stop the said construction work and should inform to this Office in

writing accordingly, failing which further action shall be taken by this office for putting your name in the black list, which may clearly be noted.

At present, your above referred proposal is rejected and the matter is disposed of.

(Sangram Kanade)
Assistant Director, Town Planning
Mira Bhaindar Municipal

Copy submitted for information and necessary steps to,

1) The Deputy Commissioner,
Encroachment and Unauthorized Construction Department, Mira
Bhaindar Municipal Corporation.

2) Assistant Commissioner,
Ward Office No.04, Mira Bhaindar Municipal Corporation.”

(emphasis supplied)

6. Mr. Kanade, on the aforesaid backdrop, would submit that on 11 June 2025, the Municipal Corporation has issued a notice to the petitioner for demolition of the construction, which according to the petitioner, was undertaken under the Commencement Certificate/ construction permission dated 30 March 2019, which was granted by the Municipal Corporation. Such permission was only up to the plinth level.

7. We have perused the record with the assistance of the learned counsel for the parties. On a query made to them, we are informed that the directions of this Court in the order dated 10 January 2023 passed on Writ Petition No. 10205 of 2022 are yet to be complied, in as much as the Municipal Commissioner has not adjudicated on the initial communication dated 22 February 2022 being a notice under Section 54 of the M.R.T.P. Act in the manner as directed by the Division Bench (supra). It is on such backdrop, although the communication dated 11 November 2020 is prior to such notice under Section 54 and the impugned communication dated 09 October 2023 (supra) is subsequent to the said order

passed by the Division Bench, we are of the opinion that all such contentions of the petitioner are required to be gone into the adjudication of such notice as the complexion of the proceedings of such notices and impugned communication appears to be common; namely that the compliances as noted in the impugned communication according to the MBMC are not fulfilled by the petitioner and which according to the MBMC are essential for granting valid construction permission. The petitioner has raised its contention on such objection, including to rely on the orders dated 21 September 2020 passed by the State Government on the petitioner's appeal under Section 47 of the MRTP Act. Be that as it may, all these issues are required to be taken into consideration by the Municipal Commissioner in adjudication and/or in appropriate proceedings and in ascertaining all appropriate compliances as the law may require. If the development permission is being rejected by the Municipal Corporation, it is for the petitioner to take recourse to an appropriate remedy as available in law against rejection of any permission.

8. In this view of the matter, keeping open all contentions of the parties to be looked into by the Commissioner as per the order of the Division Bench dated 10 January 2023, we dispose of this petition. The intimation of hearing be issued to the petitioner within one week from today.

9. Insofar as the demolition notice dated 11 June 2025 is concerned, if any construction is undertaken by the petitioner, which is within the construction permission dated 31 March 2019 is concerned, the same shall be protected, and which is beyond such permission, which is not in accordance with law, can never

be protected. However, Mr. Kanade has contended that the construction, which was undertaken, was as per the said Commencement Certificate read with the orders passed by the State Government. Accepting such statement and subject to verification of the same by the Municipal Corporation, we direct that no action to demolish the construction be taken by the Municipal Corporation on the legitimate construction, till appropriate orders are passed by the Municipal Commissioner. Let such orders be passed as expeditiously as possible and in any event within a period of six weeks from today.

10. We also record the statement as made by Mr. Kanade on instructions of Mr. Yash Shah, authorized representative of the petitioner who is present in the Court, that no further construction shall be undertaken by the petitioner and only after appropriate permissions are issued, construction would be resumed. Such statement is recorded as an undertaking to the Court.

11. The petition accordingly stands disposed of in the aforesaid terms. No costs.

(ARIF S. DOCTOR, J.)

(G. S. KULKARNI, J.)