

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11126 OF 2023
A/W
INTERIM APPLICATION NO.9501 OF 2024
IN
WRIT PETITION NO. 11126 OF 2023
A/W
INTERIM APPLICATION NO.1822 OF 2024
IN
WRIT PETITION NO. 11126 OF 2023
A/W
INTERIM APPLICATION NO.1823 OF 2024
IN
WRIT PETITION NO. 11126 OF 2023

Shaukat Anwar Mithani	]	Petitioner
Vs.		
The Member Secretary, Planning and	]	
Development Authority, Administration	]	
of UT of D & NH and Daman & Diu, Daman	]	
and others	]	Respondents
	A/W	
		WRIT PETITION NO.11127 OF 2023

Jabraram Hanjaraji Mali and another	]	Petitioners
Vs.		
The Member Secretary, Planning and	]	
Development Authority, Administration	]	
of UT of D & NH and Daman & Diu, Daman	]	
and others	]	Respondents

Mr. Y.S. Jahagirdar, Senior Advocate i/b Mr. S.C. Wakankar a/w Mr. Mayuresh Lagu a/w Mr. Sagar Patil, a/w Ms. Aishwarya Bapat a/w Sagar Lagu a/w Ms. Suruchi Rokade, for Petitioners in Writ Petition No.11126 of 2023 and for Applicant in Interim Applications No.9501 of 2024, Interim Application No.1822 of 2024 and Interim Application No.1823 of 2024.

Mr. R.S. Apte, Senior Advocate a/w Mr. Sarang S. Aradhye a/w Dnyaneshwari S. Utpat a/w Mr. Shantanu Gurav a/w Ms. Gauri Velaskar, for Petitioners in Writ Petition No.11127 of 2023.

Mr. Hiten Venegaonkar a/w Mr. Harsh Dedhia, for Respondent.(UT Administration)

CORAM: G. S. KULKARNI &
ARIF S. DOCTOR, JJ.
DATE: 08th JULY 2025.

P.C.

1. We have heard Mr. Jahagirdar, learned Senior Advocate for the Petitioners and Mr. Venegaonkar, learned Counsel for the Respondent-Union Territory Administration.

2. These are three proceedings. Writ Petition (Writ Petition No.11126 of 2023) is filed by Mr. Shaukat Anwar Mithani who claims to be the owner of land bearing Survey No.121/1 of Village Dholar, Moti Daman. Interim Application No. 9501 of 2024 is filed by the Petitioners praying that the entrance gate to their land which is sealed by the U.T. Administration be unsealed and the authorities be permitted to enter the land only for the purpose of maintaining the trees. Writ Petition No. 11127 of 2023 is filed by the persons who are the alleged occupants of the construction which has been demolished being alleged to be illegal.

3. On such land, construction as put up by the petitioner is stated to be illegally demolished by Respondent No.3 – Union Territory Administration of Dadra & Nagar Haveli, Urban Development Department (hereinafter referred to as “U.T. Administration”) on 3rd August, 2023. This case of the petitioners is disputed on behalf of respondent No.3 -U.T. Administration to contend that construction demolished was totally unauthorized. It is also the U.T. Administration’s case that despite several notices to the petitioners, the petitioners failed to remove such construction as also attempts of the U.T. Administration to remove the same were sought to be defeated hence, it intends

to justify its action.

4. It is on such complexion of facts, the present proceedings were considered by a co-ordinate Benches of this Court and *prima facie* observations were recorded. In its order dated 31st October, 2023, a co-ordinate Bench recorded willingness of the petitioners to submit fresh plans so that lawful construction can be undertaken.

5. We may also observe that protection was granted in favour of the petitioners by an earlier order dated 3rd August, 2023, however, respondent No.3–U.T. Administration contended that such protection was misused and unauthorized construction was again restored. As the pleadings reveal, the grievance of the petitioner to the effect that on 19th January, 2024 the Member Secretary, Planning & Development Authority, Administration of Union Territories of Dadra and Nagar Haveli and Daman and Diu exercising powers under the General Development Rules, 2023 and as per Rule 4.7.2 (1) of the said Rules ordered the Associate Town Planner, Planning and Development Authority, Daman to seal the entrance gate of the Petitioners' land Survey No.121/1 to stop the illegal/unauthorized construction and report the same to the Member Secretary. There is reference to the earlier correspondence in regard to the unauthorized construction carried out at the said land in regard to which the petitioner was directed to immediately stop construction and remove/demolish within thirty days or to show-cause why the constructions should not be removed or demolished. The notice also recorded that the petitioner had not stopped the construction. In such situation, it was ordered that sealing of the premises of the

said land to stop the unauthorized construction was a suitable action and accordingly the said action was taken. Respondent No.3 – U.T Administration accordingly sealed the entrance to the land under an order dated 19th January, 2024. The society order fell for consideration of this Court when co-ordinate Bench of this Court had passed an order dated 22nd January, 2024 where in the Court *prima facie* observed that the petitioners appeared to have misused the protection granted to the petitioners when it considered the grievance as urged on behalf of the respondent No.3 – U. T. Administration, that under the guise of earlier orders, demolished plinth was substantially worked upon and perhaps reconstructed. The Court also observed that *prima facie* there was a fresh plastering plinth area and there was also material to indicate that there was another structure which was new and it was not the remains of the demolished structure. In such context, the Court in its observation as made in paragraph 5 of the said order approved the sealing of the entrance of the land in question. On such backdrop, the petitioner has filed Interim Application No.9501 of 2024 (supra) wherein prayers are made that this Court directs the respondent-Authority to remove the seal and permit the petitioners to enter the land for the purpose of maintaining trees.

6. Mr. Jahagirdar, learned Senior Advocate for the petitioner has contended that the land has several trees which are required to be maintained and looked after by the petitioner for which it is necessary for the petitioner to enter the said land. It is stated that the petitioner undertakes to this Court that no construction whatsoever would be undertaken, till the plans which are already filed are

approved by the Authorities, construction permission is granted in accordance with law. It is submitted that in the intervening period the petitioner and/or his representatives would visit the site/land in question only for the purpose of maintaining the trees and an undertaking to that effect is placed on record by an additional affidavit of the petitioner – Shaukat Anwar Mithani dated 2nd June, 2024, more particularly, paragraph 3 which reads thus;

“I therefore subject to further orders that may be passed by this Hon'ble Court and subject to such conditions may be put by this Hon'ble Court, I undertake not to carry out any construction of whatsoever nature without obtaining prior permission / sanction from the competent authority / Respondents. I say that in view of this categorical undertaking, the Respondents may be directed to remove the seal put up by them by an Order dated 19/01/2024. I say that I have already filed interim Application bearing IA (St.) 8931 of 2024 inter alia praying for quashing and setting aside of an Order of seal dated 19/01/2024. I therefore say that without prejudice to my rights and contentions raised in above mentioned Interim Application and the Writ Petition itself, the Respondents may be directed to remove the seal on an undertaking that I will not carry out any construction of whatsoever nature without obtaining prior permission from the competent authority. I say that in addition to the loss which I have already suffered, in order to avoid further and greater loss to my belongings, cars and fruits and wadi, I am filing the present undertaking, subject to what has been stated herein above”.

7. Mr. Venegavkar, however, has relied on the order dated 22nd January, 2024 passed by this Court to contend that the petitioner had in fact misused the earlier orders passed by a Co-ordinate Bench of this Court dated 21st October, 2023, whereby the protection granted in favour of the petitioner as clearly observed by this Court in the said order. Mr. Venegavkar by drawing our attention to the said

order dated 22nd January, 2024 submits that grievances made on behalf of the respondent are recorded by the Court in the said order in the context in which order dated 19th January, 2024 was passed by the Member Secretary, Planning and Development Authority directing sealing of the property.

8. It seems from the prayers as made in the application that once the Court has made such observations as in paragraphs 4 and 5 what was required was the modification of the said order which was passed by the Co-ordinate Bench of this Court, which in fact approves the action of the respondent – Union Territories Administration of Dadra & Nagar Haveli in sealing of the land by an order dated 19th January, 2024. There is no prayer whatsoever that such order is required to be modified for some justifiable reason. We also find that in the earlier order the Court was certainly conscious that there were certain trees etc on the land and on such backdrop, the sealing has continued. However, despite such observations, there is no prayer for modification of the said order.

9. Considering the observations which are made by the Co-ordinate Bench, in fact, the petitioner was required to be non suited. In the order dated 31st October, 2023, observations are made by the Court that for eleven long years the Authorities could not be successful in getting adequate replies and order in material. It appears that the petitioner was fully aware that the construction which was put was wholly illegal, unauthorized and illegal construction could not have been sustained. It was removed. The petitioner had a grievance in regard to the demolition of the construction as observed by the Co-ordinate Bench in the earlier orders. Thus, on one hand, there is unauthorized construction which was

put by the petitioner and on the other hand, there is a grievance in regard to alleged high handed action on behalf of the Authorities in removing such construction. On such backdrop as recorded by the Division Bench in its order dated 31st October, 2023 when in the context of the offer made by the respondent – Union Territory to mitigate the petitioner’s grievance by paying Rs.20 lakhs, the following stand was taken by the petitioner as observed by the Court in paragraph 10, 11 and 12 of the said order:-

“10. We commenced the hearing yesterday and asked Mr Venegavkar to take further instructions as to whether the Union Territory Administration would agree to deposit a certain amount in Court towards cost of reconstruction in the event that this Court found in favour of the Petitioner, i.e., on merits that the structure could not have been demolished and was not unauthorised. Mr Venegavkar has written instructions by email to state that an amount of Rs. 20 lakhs would be deposited by the Union Territory in Court. Procedures would require some time for the deposit to be made. This was conveyed to us this morning. We found the figure to be reasonable.

11. At this stage, and having taken instructions, Mr Jahagirdar submits that a more practical solution might be to permit the Petitioner to apply for development permission afresh. This could be considered on merits without regard to the previous order. In the meantime, the Petition could be kept pending on the other issue, i.e., the probity and propriety of the action taken by the 1st Respondent and what relief ought to be granted in that regard.

12. In fairness, Mr Venegavkar states on instructions that should such an application for development permission be made, it would be considered in accordance with law. Previous directions issued by the 1st Respondent (pages 155 and 179) would either be not acted upon or could

be held by this order to stand withdrawn so that the local authority in question could receive, take on file and process applications in accordance with law. In any case Mr Venegavkar clarifies that the previous directions were only temporary and were not in fact directed towards the Petitioner or the subject structure but were general because of an anticipated change in law. That has now been withdrawn and applications are now being accepted. This statement is noted”.

10. In our opinion, considering these *prima facie* observations which are recorded in the earlier orders and, more particularly, the anxiety of the Court as recorded in the order dated 22nd January, 2024 wherein the Court in paragraph No.5 made the following observation in regard to disposal of the present petition:

“5. We will not permit our orders to be misused by any party. We are told that the Planning Authority has sealed the property and 5. threatened demolition. We are not permitting the demolition at this stage, but we are also not permitting the Petitioners to enter upon the property until further orders of this Court. The seal of the Officer will continue until further orders. This is necessary because there is finally some clarity that the Petitioners have applied not for repairs of the demolished structure(s) but for a fresh development altogether. Certain requisitions have been raised by the authorities. These will have to be complied with. That permission must be processed. Our only direction at this stage is for the authorities to process the application as early as possible. This direction does not come from any sense of sympathy for the Petitioners but only because we would like to dispose of the matter as soon as possible”.

11. In this view of the matter, we are of the clear opinion that the proceedings ought not to be taken any further, as admittedly, now plans are submitted on

behalf of the petitioner which are pending consideration of the appropriate Authority of the U.T. Administration. CRZ Permission also has been stated to have been issued and which is also subject matter of the proposal made by the petitioner. An appropriate decision on the petitioner's plan is required to be taken so that even the plans are sanctioned, the petitioner can undertake lawful construction. We order that such decision be taken as expeditiously as possible and, in any event, within a period of six weeks from today. Till such decision is being taken, we accept the undertaking as furnished on behalf of the petitioner and as noted hereinabove.

12. We also clarify that in the event of any claim for any monetary damages, the petitioner intends to pursue on its case of any illegal action of demolition, the petitioner is at liberty to take recourse to appropriate remedy as may be available in law, as it would not be possible for this Court, in exercise of its writ jurisdiction under Article 226 of the Constitution of India to adjudicate on such damages which would require evidence to be led by the parties both documentary and oral. We keep such all contentions of the parties in that regard. In the light of the above discussions, further adjudication of this petition is not called for. The Writ Petition No. 11126 of 2023, as also the Interim Application accordingly stand disposed of. No costs.

13. The petitioners in Writ Petition No.11127 of 2023 are represented by Mr. Apte, learned Senior Advocate. This petition is by the tenants of the structure which was constructed on the land in question, subject matter of consideration in the earlier Writ Petition. We observe that as and when a new construction is put

up certainly the rights of the petitioners who claim to be tenants and if the law so recognizes, such rights can be asserted by them, which shall be taken into consideration in re-occupation of these tenants as per law. Thus, keeping open all contentions of the petitioners, we dispose of this petition in view of our aforesaid order. No costs.

[ARIF S. DOCTOR, J.]

[G. S. KULKARNI, J.]