

Rakesh Co. Op . Hgs. Soc. Ltd. Through ... vs Ulhasnagar Municipal Corp. Through The ... on 5 October, 2018

Author: G.S. Kulkarni

Bench: Naresh H. Patil, G.S. Kulkarni

1

904-wp

psv

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9602 OF 2018

Deepak Naraindas Basantani

...Petitioner

Vs.

Ulhasnagar Municipal Corporation & Ors.

...Respondents

WITH

WRIT PETITION NO.9603 OF 2018

Lalbihari Jhingai Prajapati

...Petitioner

Vs.

Ulhasnagar Municipal Corporation & Ors.

...Respondents

WITH

WRIT PETITION NO.10159 OF 2018

Prashant Vilas Jadhav

...Petitioner

Vs.

Ulhasnagar Municipal Corporation & Ors.

...Respondents

WITH

WRIT PETITION NO.10160 OF 2018

Rakesh Co-op. Hsg. Soc. Ltd.

...Petitioner

Vs.

Ulhasnagar Municipal Corporation & Ors.

...Respondents

WITH

WRIT PETITION NO.10161 OF 2018

Surender Gupta

...Petitioner

Vs.

Ulhasnagar Municipal Corporation & Ors.

...Respondents

Mr.N.R. Bubna for Petitioners in all petitions.

Ms.Pooja Joshi for Respondent Nos.1 to 3 in all petitions.

Mr.P.P. Kakade, AGP for Respondent No.4 in all petitions.

::: Uploaded on - 08/10/2018

::: Downloaded on - 08/10/2018
2 904-

CORAM : NARESH H. PATIL, ACTING C.J. AND
G.S. KULKARNI, J.

DATE : 5th OCTOBER 2018

P.C.:

Heard the learned Counsel appearing for the petitioners, the learned Counsel for respondent No.1-Ulhasnagar Municipal Corporation (for short, "the Municipal Corporation") and the learned AGP for the State. As the facts and the prayers as made in these petitions are similar, we propose to dispose of these petitions by this common order.

2. The petitioners have approached this Court in these proceedings under Article 226 of the Constitution, principally for a relief, that the Municipal Corporation be directed not to demolish and/or interfere with petitioners possession of the structure in question in each of these petitions, without first carrying out (i) survey by TILR as per sanctioned development plan, (ii) following due process of law as prescribed by section 126 of M.R.T.P. Act, 1966 and paying and/or depositing the compensation for property sought to be acquired.

3. Mr.Bubna, learned Counsel for the petitioners, has made the following common submissions:-

(i) The structures of the petitioners are authorized and therefore the 3 904-wp 9602-18@ors.doc Municipal Corporation cannot demolish the structures without following due procedure in law.

(ii) The structures are on private lands and if the Municipal Corporation intends to demolish the structures for the purpose of road widening, then necessarily, the procedure to acquire the land is required to be followed, before demolition of the structures.

(iii) In case of one of the petitioners (Writ Petition No.9602 of 2018) there was a commencement certificate which was issued by the municipal corporation to commence construction of the building and therefore the structure as constructed was legal.

(iv) The structures of the petitioners are not encroachments on the D.P. Road.

(v) The petitioners were not issued a notice under the relevant provisions of the Mumbai Municipal Corporation Act intimating a demolition action.

(vi) For the above reasons action being taken by the municipal corporation is a mis-adventure.

4. On the other hand, Ms.Joshi, learned Counsel for the Corporation, would submit that the structures of the petitioners being objected by the municipal corporation are unauthorized and illegal. Our attention is drawn to the reply affidavit filed on behalf of the municipal corporation to point out that the work of widening of highway No.222 passing from the 4 904-wp 9602-18@ors.doc municipal corporation is being undertaken by the Mumbai Metropolitan Region Development Authority (for short, "MMRDA"). It is submitted that the petitioners have not produced any document like the occupation certificate of their respective structures/premises or the approved building plan which are the basic documents to show that the building as constructed is not unauthorized or illegal. It is contended that the petitioners have also not produced any document to show that the petitioners' structures are not an encroachment on the D.P. Road. It is next submitted that even the agreement under which the structure in question of the petitioner (Writ Petition No.9602 of 2018) is purchased, is only a notarized document which indicates that the petitioner has no lawful title and ownership of the structural premises as alleged in the petition. Our attention is also drawn to the provisions of Sub-section (1) of section 4 of the Unauthorized Development in the City of Ulhasnagar Act, 2006 to point out that the unauthorized development cannot be regularized under Sub-Section (3) if it is carried out on land under alignment of existing road in the approved lay out. It is thus submitted that the structures/premises in question are illegal. It is submitted that in none of these petitions, the petitioners are also not showing any documents indicating the lawful ownership of the structures in question. It is therefore submitted that the petitioners cannot claim any legal right to occupy unauthorized and illegal structures. The learned Counsel for the municipal corporation submits that notices were issued to 5 904-wp 9602-18@ors.doc the petitioners as per law. It is stated in the reply affidavit that the petitioners refused to accept the notice. It is stated that the petitioners has suppressed the fact that the municipal corporation had attempted to serve notice on the petitioner on 18th August 2018, however, the petitioner refused to accept the said notice and consequently, the said notice was issued on the Secretary of the said building.

5. The learned Counsel for the municipal corporation has also brought to our notice an order passed by us in a batch of petitions (writ petition No.11250 of 2018 Pushkar Desaram Vyas Versus Ulhasnagar Municipal Corporation & Ors.) dated 1st October 2018, wherein similar issues were raised and the petitions were not entertained and rejected.

6. We have perused the record. It is quite clear to us from the record that the petitioners in these petitions have not produced any material to show that they are the lawful owners of the structures being objected by the respondent- corporation. Thus there appears to be much substance in the contention as urged on behalf of the municipal corporation as to how the petitioners can maintain the present petitions in the absence of any ownership documents as acceptable in law. Apart from

this, we find that there is also no material to indicate that the structures are constructed after obtaining proper permission from the municipal corporation which is the 6 904-wp 9602-18@ors.doc planning authority. We find that there are no approved plans, there is no completion certificate, there is no occupation certificate being the primary document to indicate that the structures in question are legal and authorized.

7. As we see from the reply affidavit filed on behalf of the municipal corporation, a notice dated 18th August 2018 inter-alia under the provisions of Section 205 read with several other sections was issued to the petitioners. The petitioners refused to accept the said notice as stated by the municipal corporation. In any case, in the facts and circumstances, considering the nature of the public work being undertaken by the municipal corporation, it is not possible to accept the case of the petitioners that the petitioners had no notice of the proposed action of demolition of the unauthorized construction to be undertaken by the municipal corporation.

8. It is clear that the MMRDA is undertaking road widening of State highway No.222 passing through the limits of the municipal corporation. For this purpose, the MMRDA had informed the municipal corporation to remove the encroachment on road as proposed to be widened. The structures of the petitioners which are unauthorized are falling within the road line of the road proposed to be widened. The petitioners are not in a position to justify that the construction of their respective premises is legally 7 904-wp 9602-18@ors.doc undertaken or the building/premises are in any manner authorized by the municipal corporation. The petitioners not being the owners of the land also cannot have any locus to demand acquisition of the land or seek compensation.

9. The learned Counsel for the petitioners has placed reliance on the order passed by the Division Bench of this Court in Writ Petition No.1435 of 2016 to contend that the Municipal Corporation in the said case had provided alternate premises. We find that the said order is not applicable in the facts of the present case. The said case pertained to Thane Municipal corporation. The Thane Municipal Corporation itself had accepted that it would provide alternate premises to the persons who are being displaced in undertaking the work of a road widening. Such is not the position in these petitions. As the structures in the present petitions are rank illegal, the municipal corporation has not made any such offer.

10. It is not in dispute that the work of widening of the road is being undertaken in larger public interest. The municipal corporation has already made sufficient preparation and for quite some time and is taking steps in that regard. It is thus difficult to believe the case of the petitioners that no notice has been served on the petitioners. The Municipal Corporation has stated that proper notice as required by law was issued and it was refused to 8 904-wp 9602-18@ors.doc be accepted by the petitioners. In any event the petitioners would be required to satisfy the test of prejudice, in making this argument. There is no material, even prima-facie to show that the structures occupied by them are authorized or legal. Thus there cannot be a question of any prejudice. When it is a question of illegal structures and encroachments on the road line, the Court cannot interfere in the municipal corporation resorting to a lawful action to remove such illegal structures and encroachments. The law in this regard is well settled.

11. In a batch of petitions (writ petition No.11250 of 2018 Pushkar Desaram Vyas Versus Ulhasnagar Municipal Corporation & Ors.) on this very road widening heard by us on 1st October 2018, we have rejected a similar challenge. In dismissing the said petitions, we have made the following observations in paragraph 6 and 7:-

"6. The petitioners have also not produced iota of material which would show that the petitioners' structures are not encroachments. It is therefore, difficult to believe as also accept the petitioners' case that the land of the petitioners should be acquired by the concerned authorities and more so in the absence of any such material. Further in regard to the petitioners' structure there is no material to show that the construction put up by the petitioners was in any manner permitted and/or authorised by the corporation. The law in regard to the illegal constructions is well settled.

7. In the above circumstances in any case the issues in regard to the petitioners' legal rights in respect of the structures/premises, which prima facie we see none, are disputed question of facts requiring evidence to be led and certainly cannot be gone into by this Court in the 9 904-wp 9602-18@ors.doc jurisdiction of the Court under Article 226 of the Constitution."

12. The petitions in hand are not different. The issues in regard to the ownership of the petitioners and the right to occupy the premises are disputed questions of fact requiring evidence to be led. We certainly cannot entertain and adjudicate such issues in proceedings under Article 226 of the Constitution.

13. For the above reasons, we are not inclined to interfere in these writ petitions. They are accordingly dismissed. No costs.

14. At this stage, Mr.Bubna for the petitioners seeks continuation of the ad-interim order.

15. In the facts of the case and the public work in question, the prayer is rejected.

G.S. KULKARNI, J.

ACTING CHIEF JUSTICE