

(2024) 09 BOM CK 0031
In the Bombay High Court
Case No : Writ Petition No. 12316 Of 2015

Lekha Ali Shaikh w/o Ali M Shaikh

APPELLANT

Vs

Chief Executive Officer

RESPONDENT

Date of Decision : 27-09-2024

Acts Referred:

Cantonments Act, 2006 — Section 238(6), 248(1), 340

Citation : (2024) 09 BOM CK 0031

Hon'ble Judges : M.S. Sonak, J;Kamal Khata, J

Bench : Division Bench

Advocate : Jyoti Chavan, Namrata Pangam, Atharva Jagtap, Ashok B Tajane

Final Decision : Dismissed

Judgement

Kamal Khata J

1. Rule. Rule returnable forthwith. With the consent of the parties, the matter is taken up for a final hearing.
2. This Petition illustrates one amongst numerous instances of unauthorised constructions on private land, notably erected by the owners themselves without any prior application or approval of the Concerned Authority. It also illustrates how the owner, in this case, initially innocently constructed a small structure and, after a couple of years, in the guise of repairs, reconstructed a significantly larger structure and sought to regularise it.
3. Slumlords frequently employ this strategy to create illegal settlements systematically. The old proverb, 'A drop of poison can contaminate the whole well,' is increasingly becoming a stark reality. A law-abiding citizen wonders: if a lawbreaker like a 'slumlord' can construct illegal structures on public and private land without facing the consequences, why shouldn't a private landowner build without permission or approvals? This idea promotes a culture of lawlessness and corruption, undermining the very foundation of lawful governance.

4. Filed nearly nine years ago in 2015, this case offers a glimpse of a much larger issue. It is unacceptable that the Courts remain inundated with thousands of such cases. Often, law-abiding citizens are forced to take action to either protect their property or to drive the attention of Courts with regard to such illegalities to uphold the rule of law. Whilst it is the Court's unequivocal duty to ensure that citizens comply with the law and that offenders, regardless of influence, are met with strict and decisive punishment, the Legislature, too, must urgently intervene and halt this disturbing trend.

BRIEF FACTS:

5. This Petition seeks a writ of mandamus to quash and set aside the order dated 12th January 2015 issued by the Chief Executive Officer of the Cantonment Board, Pune ("the Board"). The Board holds that the Petitioner's construction on the plot within the 'Red Zone' where no construction is permitted, cannot be sanctioned under any circumstances. As a result, the unauthorized construction must be demolished.

6. The Petitioner claims to be the owner of land bearing survey No. 26/17B/2 at Village Mamurdi, Shitalanagar, Dehu Road, Taluka Haveli, District Pune. She asserts that she purchased this 1500 sq ft private land in her minor son's name from the previous owner, Mr Nardevkumar Ramlal Chibar through a registered sale deed dated 12th May 2009 bearing registration No. 1917 of 2009.

7. The Petitioner has admittedly constructed three rooms totaling 750 sq.ft (30x 25 sq ft) with the tin roof, on the land in 2009. The Dehu Road Cantonment Board records this property as House Property No. 893. Property Taxes have been paid to date, and there is no dispute regarding this.

8. Notably, the Petition is silent on whether permissions were sought or approvals obtained for the 750 sq.ft. structure and whether an occupancy certificate was obtained. There is no argument presented to suggest that such permissions or approvals were unnecessary. The Petition seems to assume that since the property taxes were paid, and water and electricity connections were granted, the structure is authorised, and no further permissions were required. Why no action was taken to remove the structure remains as an unanswered question.

9. Subsequently, the Petitioner claims to have submitted the requisite Forms Nos. A and B to the Cantonment Board to seek approval for repairs and additional construction for House No. 893. Form B declares that the structure is intended to be used for commercial purpose. The Petition asserts that these applications were submitted to the Board, which acknowledged receipt on November 21, 2010.

10. The Petitioner's assertion that she requested the Members and the CEO of the Board to consider her application for approval of building plans appears to be merely a bald statement. The Petitioner claims that there was no response, oral or written. On 4th May 2011, six months after applying, the Petitioner was

instructed to deposit Rs. 8,420/- towards building application processing fees and security charges.

11. The Petitioner thus contends that the Respondent's failure to communicate any refusal or rejection of the application means that she has obtained deemed sanction. She claims to have waited one and a half years after submitting her application to begin constructing a 1500-square-foot building.

12. The Petition further contends that the building was completed in January 2013. In June 2013, the Respondent addressed two letters dated 19 June 2013 intimating the Petitioner about rejecting their application for approval of the building plan and demolition of her structure. The Petition asserts that no reasons were provided for the two-year delay in rejection and claims the letters were issued under political pressure to harass her.

13. The Petitioner attempts to justify the deemed sanction Section 238 (6) of the Cantonments Act 2006, which allows for such approval if the Board fails to respond to a valid notice within the stipulated time frame. Sub-Section 6 of Section 238 of the Cantonments Act 2006 reads as under:

"Section 238 (6): Where the Board neglects or omits, for one month after the receipt of a valid notice, to make and to deliver to the person who has given the notice any order of any nature specified in this section, and such person thereafter by a written communication sent by registered post to the Board calls the attention of the Board to the neglect or omission, then, if such neglect or omission continues for a further period of fifteen days from the date of such communication the Board shall be deemed to have given sanction to the erection or re-erection, as the case may be:"

14. The Petitioner, through her Advocate, responded to the notice dated 19 June 2013. Subsequently, on 7 January 2014, she received a notice under Section 248 (1) of the Cantonments Act 2006. An appeal was preferred under Section 340 of the Cantonments Act 2006, but it was dismissed by an order dated 12 January 2015. This order is annexed to the Petition as Exhibit 'H' at Page 41. Ms Chavan, for the Petitioner, submits that the Petition was filed in these circumstances.

15. Mr Ashok B Tajane was called upon to appear on behalf of the Board. He had no instructions on the matter. After hearing the Petitioner's Advocate, we found no reason to call upon Mr Tajane to file a reply. Upon reviewing the order, we felt that the Petition was meritless and required no reply from the Board. Evidently, the Petitioner constructed a 750 sq. ft structure without permission, and the subsequent additional construction was also illegal.

16. The 12 January 2015 order is well-reasoned and has considered the arguments of both parties and provides clear justification for ruling against the petitioner. The Petitioner failed to establish that her original structure was legal. Apart from that, the circumstances to establish any deemed permission were also not made out. The permission was sought for repairs, but in reality, the

original illegal structure was massively enhanced. All this was done in a Red Zone that permits no construction. The two authorities correctly rejected the argument about the Zone not being Red when the original illegal structure was built. Accordingly, no case is made out to interfere with the concurrent findings of the two authorities.

17. Ms Chavan, for the Petitioner, could not produce any document to show that the structure constructed in 2009 by the Petitioner itself was legal. In our view, a subsequent application for repair and additional reconstruction would, therefore, be illegal as well. The Petitioner could not have legalised the structure, which was illegal since its inception, by applying for sanctions for repairs and some additional reconstruction. Payment for processing and security charges by itself would not give any credence or authenticity to the so-called application, thereby providing the Petitioner with the right to construct without permission on the plot, though privately owned.

18. Having reviewed the order of the Appellate Tribunal, it can be evinced that the Petitioner has suppressed material facts. Paragraph 30 of the order indicates that the Board required the Petitioner to show a drainage line on the plan. Once this was done, the Board passed Resolution No. 2 on 8 February 2011, confirming the minutes of the Civil Area Committee. The Petitioner was then asked to pay the required processing fee by the Respondent Board letter No. 10/46 /233 dated 4th May 2011. The Petitioner has completely suppressed this critical fact. As such, this fact is pertinent and significant. It shows that failing to pay the processing charges resulted in the sanction not being granted.

19. As stated earlier, the initial construction was illegal. The petition apparently does not make any averment or even mention this letter dated 4th May 2011. The petitioner clearly suppressed the communication. On this ground alone, the Petition deserves to be dismissed.

20. The only defence that the Petitioner has is that the construction that was initially carried out was before 18 February 2013, when the said area was not declared a Red Zone. Thus, the Cantonment Board could not have ordered its demolition. As the matter now stands, the earlier construction has been admittedly demolished. The area is under the Red Zone, and no construction can be permitted. The entire construction is thus unauthorised and liable to be demolished.

21. The building is located within the Red Zone under the Works of Defence Act 1903, as declared by the Collector of Pune. Ms Chavan's contention that the property is now likely to be declared beyond the Red Zone cannot be accepted inasmuch as presently, and the Petitioner cannot be allowed to continue an unauthorised construction with the hope that in the future, the said property will be declared beyond the Red Zone.

22. We find no merit in the Petition. The Petition is dismissed with costs of Rs 100,000/-.

23. The Board is directed to file an affidavit explaining why no action was taken under the notice and order dated 12 January 2015 to demolish the construction for nine years. The CEO of the Cantonment Board is to file such an affidavit of compliance with photographs after completing the necessary demolition work. Such an affidavit must be filed by 22 November 2024.

24. List the matter on 25 November 2024 to consider the compliance report.