

(2013) 10 BOM CK 0210

In the Bombay High Court

Case No : Public Interest Litigation No. 207 of 2010

Mrs. Jayashree Suresh Dange

APPELLANT

Vs

The Member Secretary, The Maharashtra Pollution Control
Board and The Commissioner, Pimpri Chinchwad

RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Citation : (2014) 4 ALLMR 16

Hon'ble Judges : M.S. Sonak, J; D.Y. Chandrachud, J

Bench : Division Bench

Advocate : U.P. Warunjikar, for the Appellant; Sameer Patil, AGP for Respondent State, Mr. S.R. Ganbavale for Respondent No. 2, Mr. D.M. Gupte for Respondent No. 1 and Mr. Ajay Patil for Intervener, for the Respondent

Judgement

D.Y. Chandrachud, J.—Admit. Learned counsel for the Respondents waive service. The PIL is taken up for hearing and final disposal, by consent and on the request of the learned counsel. The grievance which has been highlighted in these proceedings, which have been filed in the public interest, reveals an alarming state of affairs within the jurisdiction of Pimpri-Chinchwad Municipal Corporation ("PCMC"). Unauthorized constructions have been made brazenly without building permissions. Even according to the PCMC, there are over 66,000 unauthorized constructions. The PCMC has been lax in enforcing its obligations as a planning authority apart from issuing notices and lodging FIRs in certain cases. The Maharashtra Pollution Control Board ("MPCB") which is vested with statutory powers of enforcing the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, has also stood by and besides issuing notices, failed to exercise its statutory powers for enforcing compliance with law.

2. The Pawna River flows through the PCMC area and is a vital source of water in the area. The grievance of the Petitioner is that several unauthorized constructions have been carried out in the green belt of Pawna River. Many of the

unauthorized constructions have been carried out on the river bed or on the banks of the river. One of them is a school named New Millenium English Medium School which has been constructed in the green zone. In response to a query under the Right to Information Act, the Petitioner was informed by the Information Officer of PCMC that no building permission has been granted to construct the New Millenium English Medium School. The Fourth Respondent who has been brought on record is Pratibha Mahila Pratisthan, which conducts the New Millenium English Medium School on survey no. 72/part.

3. In the affidavit-in-reply of the PCMC it has been stated that the unauthorized construction at survey no. 72/part mentioned in the petition is in fact in the green belt and a part of which falls within the Blue Flood Line. Hence, the structure is not only unauthorized but is also in violation of environmental norms. The affidavit of the Executive Engineer states that there are 66,324 illegal structures within the municipal area; that the PCMC had issued nearly 66,324 notices and commenced demolition of illegal structures, as a result of which 243 structures have been demolished. It has been stated in the affidavit-in-reply that 863 FIRs have been lodged against the owners/occupiers of such unauthorized structures. However, the PCMC has on the ground that the number of unauthorized constructions is large, submitted a proposal on 2 August 2011 to the State Government to regularize all illegal constructions prior to 31 March 2011. Subsequently, by another proposal dated 7 August 2012, the PCMC has sought the permission of the State Government to regularize all unauthorized constructions prior to 31 March 2012.

4. The Fourth Respondent has filed an affidavit-in-reply raising a grievance in regard to the locus of the Petitioner on the ground that the building where the Petitioner is residing, has been constructed in an unauthorized manner. We are not inclined to entertain this objection. If the Petitioner has violated the law, she will be dealt with stringently. Learned counsel for the Petitioner denies the allegation and submits that her structure was regularized. Be that as it may, the petition raises an extremely serious issue having a bearing on public interest. We need not for this purpose enter any finding in regard to the allegation against the structure of the Petitioner and the Fourth Respondent may draw any violation to the notice of the PCMC. Moreover, it has been submitted that the Petitioner had contested the elections for the position as a Corporator in the Municipal Corporation.

5. Further it has been stated in the reply that 2,487 students have been admitted in the school; that the management has secured alternate accommodation within the limits of PCMC where it plans to construct a new building where the existing school would be shifted in about two years.

6. During the course of hearing the learned counsel for the Fourth Respondent does not dispute that:

(i) The construction of the school by the Fourth Respondent is in the green zone;

and

(ii) No building permission was obtained before the construction was carried out.

The counsel for the Fourth Respondent states that until about two years ago, the President of the Fourth Respondent was a local MLA, Laxmanrao Jagtap, but that he has since demitted that position.

7. The petition highlights that unauthorized constructions have been carried out brazenly in the green zone and in the vicinity of Pawna River. The MPCB in its affidavit-in-reply has stated that when the site was visited on 15 April 2013 and 17 April 2013, it was found that two garages and one restaurant were found to be in operation in close proximity to the school. MPCB called upon the PCMC by a letter dated 22 April 2013 to disclose the details of the action taken by the PCMC in respect of the four structures. The PCMC has not responded thereto. Thereafter the MPCB issued a notice on 22 April 2013 u/s 33A of the Water (Prevention and Control of Pollution) Act, 1981 calling upon the concerned units to show cause why the water and electricity connections should not be disconnected and effective steps should not be taken for the cessation of the unauthorized activities. The MPCB has indicated in its notice that the units were operated without its consent; that they were located on the banks of Pawna River and that hazardous waste has been disposed off in an unscientific manner.

8. The material which has been placed on the record leaves no manner of doubt that there is a complete breakdown of governance in the enforcement of urban planning legislation within the jurisdiction of PCMC. The PCMC is a planning authority within the meaning of the Maharashtra Regional Town Planning Act, 1966 and is duty bound to enforce those provisions. As many as 66,324 structures are found to be unauthorized. Even after issuing notices of demolition, the PCMC has taken action only against 225 structures. The illegalities are compounded by a proposal for regularization en masse. This is a virtual negation of the rule of law. Learned counsel for PCMC states that PCMC lacks adequate infrastructure and is dependent on the Police authorities to support its enforcement measures. What is disturbing is the complete absence of administrative will on the part of the authorities of the State including the planning authority to take cognizance of the serious dimensions of the unauthorized structures within the limits of PCMC. PCMC has compounded the illegalities by now proposing to regularize initially all structures which had come up prior to 31 March 2011 and subsequently all structures which have come up prior to 31 March 2012. The consequence of these proposals does not require any stretch of imagination to appreciate. What the PCMC has proposed to do in fact acts as an incentive for those who carry out unauthorized constructions, since the violators of the law can be sanguine in that belief that their structures will not be demolished and in fact would be tolerated at a future date. We emphatically disapprove of the conduct and the decisions of the PCMC and hold the Commissioner of PCMC personally responsible for taking immediate steps and stringent action against unauthorized constructions including those which form

the subject matter of the PIL before this Court.

9. We direct, in consequence, the Commissioner of Pimpri-Chinchwad Municipal Corporation to take steps forthwith against all the unauthorized structures to which a reference has been made in the affidavit-in-reply of the PCMC in accordance with law. The Commissioner of Police shall render all required assistance.

10. Insofar as the Fourth Respondent is concerned, the construction of the structure is a paradigm of the kind of illegalities that have taken place since the construction has been made within the Blue Flood Line and in an area which forms part of the green belt without any building permission and totally in violation of law. We find no justification in the contention of the Fourth Respondent that no action be proceeded against it because a large number of students have been admitted. Such illegalities are sought to be justified by adverting to the human aspects involved. Having due regard to the aforesaid position of which the Court cannot be oblivious, we have recorded the assurance of the counsel for the Fourth Respondent, on instructions, that all the trustees of the Fourth Respondent shall file their personal affidavits undertaking that the unauthorized construction shall be removed voluntarily and completely on or before 31 May 2014. We direct the Fourth Respondent to restore the site to its original condition to the satisfaction of MPCB on or before 31 May 2014. The affidavits containing undertakings to be filed by all the trustees shall also specify that all the costs, charges and expenses that may be required by the MPCB or any other agency for restoring the site to its original condition, shall be borne and met by the Fourth Respondent. MPCB shall for that purpose call upon the Fourth Respondent to place at its disposal such funds as may be necessary for taking suitable remedial measures to restore the environment. We also direct the PCMC to take due steps to ensure, in the event that the structure of the Fourth Respondent is not removed by 31 May 2014, the removal of the unauthorized structure. The Commissioner of Police shall render all necessary assistance to the PCMC for that purpose.

11. The PCMC is also directed to take necessary steps with the aid and assistance of the Commissioner of Police for the removal of all other offending structures in the green zone referred to earlier in accordance with law. The PCMC shall file a report of compliance within a period of three months from today.

12. We further direct that the PCMC shall pursue steps in accordance with law for action against the unauthorized structures referred to in the affidavit-in-reply and submit a report before this Court within a period of three months in regard to the action taken.

13. The PCMC shall take necessary steps for invoking its powers under Sections 52 and 53 of the Maharashtra Regional and Town Planning Act, 1966 for lodging prosecutions. Similarly, MPCB shall take necessary recourse to its powers under the relevant environmental legislation for dealing with cases of violation. The

petition shall now appear on board on 17 January 2014 for reporting compliance.