
(2019) 04 BOM CK 0090
In the Bombay High Court
Case No : Writ Petition No. 5309 Of 2018

M/s. Shantai Group

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 11-04-2019

Acts Referred:

Maharashtra Provincial Municipal Corporation Act, 1949 — Section 254, 267

Citation : (2019) 04 BOM CK 0090

Hon'ble Judges : S.C. Dharmadhikari, J;B.P. Colabawalla, J

Bench : Division Bench

Advocate : A.V. Anturkar, Vrushali Maindad, Abhijeet Desai, A.A. Purav, P.K. Dhakephalkar, Nilesh Kadam, Sachin Dhakephalkar, Rohit P. Sakhdeo

Judgement

S.C. Dharmadhikari, J

1. Heard both sides.

2. Rule. Respondents waive service. Since all the contesting respondents are before this court, with their consent, the writ petition is disposed of finally by this order.

3. The petitioner before this court is a registered partnership firm carrying on business as Builder and Developer from the address mentioned in the cause title. The first respondent is the State of Maharashtra and respondent nos. 2 to 4 are the authorities exercising powers under the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as "the MLRC"). Respondent nos. 5 to 18 are the private parties and as far as the subject issue or controversy is concerned, their presence is not necessary save and except respondent no.5. Respondent no. 19 is the Municipal Corporation of Pimpri Chinchwad (hereinafter referred to as "the Municipal Corporation"), a Municipal Corporation established and covered by the Maharashtra Provincial Municipal Corporation Act, 1949 (hereinafter referred to as "the Act of 1949") and respondent no.20 is the City Engineer of this Municipal Corporation.

4. The petitioner says that the area admeasuring 0-H 20-R out of Original Survey No.93/3/1 was initially sold by a registered sale deed, copy of which is at Exhibit 'A'. Thereafter, the petitioner claims to have obtained a right to develop the property because the petitioner firm was in receipt of a registered power of attorney and development agreement dated 17th October, 2005. The petitioner says that it purchased total area admeasuring 0-H 20-R out of Survey No.93/3/7 by a registered sale deed dated 20th September, 2010. The petitioner, thus, claims to have purchased not only this land, but an adjoining land as well. The petitioner says that measurement of the land-Survey No.93 was carried out and details pertaining thereto are set out in para 5 of the writ petition. Then, the petitioner relies upon the Measurement Report No.607 of 2007 dated 27th August, 2007, copy of which is at Annexure 'E' to the petition.

5. The petitioner says that the fifth respondent and one more person purchased an area admeasuring 0-H 40-R by a registered sale deed dated 26th July, 2010, but they have depicted wrong boundaries in Survey No.93/3/1. This is a land which is different from that of the petitioner's land. The correct boundaries are as depicted in the sale deed of 17th October, 1980.

6. It is claimed that there was a measurement issue or dispute. Paras 9 to 11 of this petition point out the details of such dispute. Thereafter, the matter was taken up before the Deputy Director of Land Records and what transpired before him, during a hearing, is then set out in para 12 of the writ petition. It is alleged that the fifth respondent, at the relevant time, was a Mayor of this Municipal Corporation and, using his political influence and position, he prevailed upon the authorities, exercising powers under the MLRC, to initiate proceedings and reopen the issue of measurement. Be that as it may, we are not concerned with the said dispute, but what is material for our purpose is the intervention of the Municipal Corporation. From the annexures to the writ petition, it is apparent that the petitioner was firstly in receipt of a Commencement Certificate (CC) and that CC came to be revalidated. It was revised and the copy of the revised CC is at Exhibit 'D-1' to the paper book. Condition Nos. 19 and 20 therein are relevant. Thus, this is a revised CC, but with terms and conditions. Condition No.19 says that in the event there is dispute regarding measurement of the properties as per the position of the respective parties, then, the Municipal Corporation would not be responsible for such dispute about the measurement and boundaries. It is very clearly stated in Condition No.19 that unless the City Survey Office does not issue the correct measurement map and the property card, the petitioner shall not be issued the part or full completion certificate. Thus, it is stated that once there is an issue also pending with regard to amalgamation of the properties, then, a revised property card, along with proper measurement would have to be produced before the Occupation Certificate (OC) is applied for.

7. It is then claimed that the initial permission of 14th July, 2010 is thus revalidated and it also had the same condition which we have referred above.

8. The writ petition proceeds to state that an order came to be passed on 21st

July, 2011 in Writ Petition No. 3455 of 2011. The petitioner was aggrieved by, inter alia, the order of the Deputy Director of Land Records as well as that of the Municipal Corporation. The Municipal Corporation, according to the petitioner, relied upon the dispute regarding the measurement and initiated at the instance of respondent no. 5, to pass an order or issue a communication that the CC is stayed. Aggrieved by that order as also the orders of the Revenue authorities, this writ petition was filed in this court.

9. A Division Bench of this court passed an order and we reproduce that order for ready reference:-

"1. Rule. Rule returnable forthwith. Heard finally by consent of parties. The first order, which is challenged in the petition is the order passed by the Deputy Director of Land Records, dated 8th April 2011. Perusal of that order shows that the Director has really heard the applicant only on the question of grant of interim relief but the Director disposed of the revision itself. This obviously is in breach of the principles of natural justice. Hence, order dated 8th April 2011 passed by the Deputy Director of Land Records is set aside, He is directed to decide the revision on merits after granting an opportunity of being heard to the parties. While deciding the revision, Dy. Director of Land Records, it is obvious, will decide the revision on the basis of material produced before him, uninfluenced by the administrative directions that may have been issued in the matter by any higher officer.

2. The grievance of the petitioner is that the Corporation, on the basis of complaint made by Mayor, made an order directing the petitioner to stop work, which he was carrying out pursuant to the sanctioned building plan. Considering that the order is made by the Corporation on the basis of complaint made by Mayor, in our opinion, following order would meet the ends of justice.

3. The stop-work order made by the Corporation is set aside. The petitioner would be free to carry on the work on the basis of sanctioned building plan. But the work carried out by the petitioner shall be at his own risk. The petitioner shall not be entitled to claim any equities on the basis of the work that the petitioner carries on.

4. The complaint is made by Mayor to the Deputy Director of Land Records. Hence, in our opinion, it will be appropriate for the Dy. Director of Land Records to deal with that complaint and make orders thereon in accordance with law. On course, before making any order on that complaint, parties who are likely to be affected by his order, have to be granted an opportunity of being heard. While dealing with the complaint made by Mayor, the Dy. Director shall act in accordance with the law, without being influenced by any administrative directions issued by his superiors.

5. Rule made absolute accordingly. No order as to costs."

10. After that order was passed by the Division Bench on 21st July, 2011, it is

claimed that the matter proceeded before the authorities at a fresh hearing and that was held. We are not concerned with the order which has been passed by this court in Writ Petition Nos.4538 of 2013 and 7720 of 2014. In both the matters, from the record, it appears that this court has not dealt with the substantive issue, but purported to issue directions. Be that as it may, the record indicates that the fifth respondent has filed a civil suit, being Civil Suit No.13 of 2014. That suit is pending and even the issue of measurement is pending. The fifth respondent made an application to the Municipal Corporation by relying upon an order of the authorities under the MLRC on the point of measurement and asserted that the measurement in terms of Measurement Report No.607 of 2007 has been cancelled. Once that measurement has been cancelled, then, the construction going on as per the permissions dated 14th July, 2010 and 15th October, 2013 needs to be stopped. Based on that, the stop-work notice came to be issued on 22nd June, 2016, which is at Annexure 'Y' to the petition.

11. The petitioner states in para 28 of the petition that in the past, similar stop-work notice was issued relying on the order of the Superintendent of Land Records holding that both the measurements overlap each other. However, that notice was set aside by this court. The petitioner was allowed to carry on construction work on the basis of the sanctioned plan at its own risk. The petitioner was not to claim any equities. However, the petitioner says that, as on today, the construction of the building is complete, agreements to sell the flats are already executed in favour of the purchasers and in the further affidavit, it is stated that in all 47 flats have been constructed, out of which, 46 are disposed of. There is only one flat which remains unsold.

12. The petitioner also claims that the issue before the authorities of measurement may be pending, but that is no ground to issue the stop-work notice. The power to issue stop-work notice, conferred by section 267 of the Act of 1949, is thus not available in the facts and circumstances of the present case.

13. The contention of Mr.Anturkar learned senior counsel appearing for the petitioner is that the stop-work notice is bad in law. It has been issued only by relying upon the cancellation of Measurement Report No.607 of 2007. Inviting our attention to page 430 of the paper book, it is urged that in an appeal which was filed by the petitioner-appellant, the appellate authorities have proceeded to reject it. After that order was passed, another communication was issued on 12th April, 2018, copy of which is at page 440 of the paper book, by the Municipal Corporation. The Municipal Corporation called upon the petitioner to show cause as to why cognizance should not be taken of the order passed by the appellate authority.

14. Mr.Anturkar submits that everything that the petitioner is impugning and challenging in this petition has been done by the Municipal Corporation at the instance of the fifth respondent. It is the fifth respondent who is prevailing upon the Municipal Corporation to issue the stop-work notice. Mr.Anturkar invites our attention to the additional affidavit filed on behalf of the petitioner to urge that

the building sanction plan on Plots 'A' and 'B' was obtained. In Plot 'A', the sanction was to construct six floors (48 flats) and in Plot 'B', permission was granted by the Planning Authority for a building ground plus one upper floor, namely, five flats. Insofar as the CC dated 15th October, 2013 issued by respondent nos. 19 and 20, a non-agricultural order has been issued. The petitioner started the construction work of flats on Plot 'A' and completed it in the year 2013-14. The first flat has been sold on 15th July, 2013 and the last flat has been sold on 19th May, 2015. The petitioner says that in the year 2010 itself, the dispute with regard to overlapping measurement arose and a stop-work notice was issued, but that notice was specifically set aside by this court. Mr.Anturkar, therefore, submits that this court may have recorded a statement or issued a direction that the construction will proceed at the risk of the petitioner and it will not claim any equities, still, the petitioner is not precluded from challenging the legality and validity of the instant stop-work notice. The petitioner cannot be said to have waived its legal rights. The stop-work notice has been issued after the construction and development is complete. If in law the stop-work notice could not have been issued at all, then, merely because this court has observed in para 3 of the order passed on 21st July, 2011 that the construction will proceed at the risk of the petitioner does not mean that the present petition is not maintainable or that the petitioner is estopped from challenging the instant stop-work notice. In any event, the stop-work notice dated 22nd June, 2016 is under challenge. Thus, the petitioner can impugn this stop-work notice and precisely that has been done in this case.

15. Our attention has been invited to section 267 of the Act of 1949 by Mr.Anturkar.

16. Mr.Sakhdeo learned advocate appearing for the Pimpri Chinchwad Municipal Corporation would submit that the Municipal Corporation has not become a party to a private dispute much less has it taken cognizance of any private dispute in regard to measurement of properties. That is a dispute between two private parties in regard to measurement of the immovable properties claimed by them, respectively. The Municipal Corporation has nothing to do with such a dispute, but when it finds that a construction activity has been carried out without the issue of measurement being resolved, then, surely, in order to prevent further mischief, it stepped in. It has neither obliged the fifth respondent nor acted at the instance of the fifth respondent. Hence, the counsel would submit that the writ petition be dismissed.

17. Mr.Dhakephalkar learned senior counsel appearing for the fifth respondent would urge that the petitioner cannot challenge the stop-work notice. The petitioner has purchased the property subsequently and was not on the scene at all when the fifth respondent purchased the property. It is incidental that the fifth respondent happened to be the mayor of the Municipal Corporation, but, now he is no longer holding that position. The petitioner is just relying upon the factual issue raised by respondent no.5 and which he is entitled to raise irrespective of

any political office occupied by him. As a purchaser of the property, it is open to him to complain to the Municipal Corporation that the construction carried out is in the face and teeth of a pending measurement dispute and adverse orders therein. The measurement map has been cancelled. That is the foundation on which the construction permission was sought. Our attention has been invited to the order of 20th August, 2010, copy of which is at pages 231-232 of the paper book. Mr.Dhakephalkar submits that as early as on 23rd February, 2011, the fifth respondent had warned the petitioner that the construction cannot be permitted and it stayed the CC. Once there was a stay to the CC after the communication of 22nd March, 2011, then, the initial construction permission does not enure to the benefit of the petitioner at all. That construction permission apart, this court, finding substance in the complaint of the fifth respondent, warned the petitioner about all the consequences. It pointed out to the petitioner that it can construct even after the stop-work notice is cancelled, but, surely, it cannot continue the activity unmindful of the legal consequences that would ensue after the measurements and maps in relation thereto are cancelled. For these reasons, Mr.Dhakephalkar submits that it was open for the Municipal Corporation to issue the instant stop- work notice and it was not precluded in law from doing so. For all these reasons and as the petitioner has not approached this court with clean hands that this petition must be dismissed.

18. The Municipal Corporation has issued a stop-work notice. The notice has been issued on 22nd June, 2016. We must first notice a pertinent development. On 1st January, 2014, the fifth respondent to this writ petition filed a civil suit, being Special Civil Suit No.13 of 2014 in the court of Civil Judge, Senior Division, Pune. The suit was filed by the fifth respondent and one Mr.Shrichand Shamandas Aswani. The defendants to the suit, inter alia, are the petitioner and several private parties. Defendant no.30 is the petitioner before us. In that suit, respondent no. 5 says that the property involved and subject matter of the suit is described in para 1. After relying upon the deeds and documents in relation to the immovable property, what is material for our purpose is the averment in the suit accusing the petitioner of having commenced a construction activity. The cause of action is stated to be the Deputy Director of Land Record's order dated 31st December, 2012. The Deputy Director of Land Records has held that the contentions raised by the parties can be resolved in a civil suit only. The dispute is about the boundaries and overlapping fixation of the same as per the title deeds. He remanded the matter to the Superintendent of Land Records, but again the petitioner before us moved the High Court against this order. The issue about the boundaries can be decided by the civil court only. The High Court, as an appellate court, cannot take cognizance of this dispute. Defendant no. 30, namely, the petitioner before us is proceeding with the construction and if it completes the same, there will be multiplicity of proceedings. It is also stated that nobody can claim independent possession unless there is validation by metes and bounds on the strength of correct maps. The petitioner before us has started the construction when in fact the possession of piece and parcel of land,

which was purchased by virtue of a sale deed, is not proper and accurate. The petitioner before us has not fixed the exact location as per law. There will be multiplicity of proceedings, therefore, if the petitioner before us is allowed to proceed. The prayers in the plaint make an interesting reading. They read as under:-

"i) The Partition between plaintiff and defendants by metes and bounds be made as per the title documents in a sequence as disposed off by the original owner. If the defendant failed to partition the property, Court Commissioner be appointed for doing the same.

ii) Mandatory Injunction be granted that all defendants are restrained from dealing or parting with the possession till there is a partition by metes and bounds.

iii) Interim Injunction as prayed separately be granted.

iv) That so far as, Def.No.30 is concerned. Def.No.30 being on the wrong location Def.No.30's construction be demolished and if Def.No.30 fails to demolish, the Court Commissioner be appointed for demolishing the same.

v) Mandatory Injunction directing the Def.No.30 not to continue with the construction till Def.No.30's location is decided and/or not to carry on the construction be granted.

vi) Interim Injunction restraining the Def.No.30 from continuing with the construction and/or carrying on the construction till Def.No.30's location is decided by the Hon. Court and/or dealing with the property or parting with the possession.

vii) The Mutation Entries viz.No.2247, 2248, 2447, 2448, 4052, 5861, 4740, 4741, 5862, 6379, 7556, 8126 & 8127, all these shall to be declared cancelled & deleted from the Revenue record of suit property, S.No.93/3/4 and 93/3/6, the necessary order be issued to concerned Revenue Authority & then only the order of partition for suit property.

viii) That the sale deeds registered before Sub Registrar Haveli 5, viz. Sr.No.5218 Dt.21/7/1998 Sr.No.361, 362, 363 Dt.21/1/1999 & Sr.No.5217 Dt.21/7/1998 & sale deed registered before Haveli No.14 at Serial No.3304/2013 and sale deed registered before Haveli No.5, Serial No.12226/2011 shall be declared cancelled which are double disposal by V.V.R. in favour of Vijaya Appasaheb Zare & her successor-in-title i.e. M/S Shantai Group, Chandrakat Kusappa Patil, Vidhya Subhash Gore through Baban Dorge & Eknath Dattatray Wani and his successor-in-title i.e. M/S Shantai Group the defendant No.5, 6 & 30 be declared as non-est in the eye of law and of no consequences and note of a cancellation thereof be sent to Sub Registrar concerned to take note of the cancellation.

ix) That the revenue authority be directed to correct the record as per directions of this Hon. Court in terms of this decree.

x) Any other just and equitable order in the interest of justice be passed.

xi) Cost of the suit be granted throughout.

19. Once there is a dispute about the boundaries, measurement and the MLRC itself says that the directions and orders of the authorities therein are subject to the order of a competent civil court and would have to abide by a decree and order of a competent civil court, then, we do not see why the Municipal Corporation had to step in. The Municipal Corporation, by the impugned stop-work notice, says that there are CCs issued initially on 14th July, 2010 and a revised CC of 15th October, 2013 both in favour of the petitioner. One Advocate Geetanjali Kadate on 16th March, 2016 forwarded a notice to the Municipal Corporation. Along with the notice, there is an application made. To that application is annexed the order of the District Superintendent of Land Records cancelling Measurement Report No.607 of 2007. Once this measurement registration is cancelled and the map in accordance therewith does not survive, then, the Municipal Corporation is duty bound to take cognizance of the same. It is duty bound to take cognizance of the communications from the authorities under the MLRC, particularly cancelling the measurement. For these reasons, according to the Municipal Corporation, the construction in terms of the above CC should be stopped until further orders.

20. Each of the matters that are referred to in this notice are subject matter of the substantive suit. Pertinently, in the substantive suit, the fifth respondent has not been able to secure and obtain any prohibitory orders, ad-interim or interim, restraining the petitioner from carrying on with the construction and completing it. This suit is filed a good two and half years before the impugned stop-work notice. If the fifth respondent to this petition was not successful in securing any interim orders against the petitioner before us, then, the Municipal Corporation, in the teeth of the pending suit, could not have obliged him by issuing the stop-work notice. We do not find any substance in the contention of the advocate for the Municipal Corporation as also Mr.Dhakephalkar that the impugned stop-work notice has not been issued on account of the intervention or at the instance of this fifth respondent. They say that he could not have enjoyed any political clout once he demitted the Mayoral office. However, he has definitely been obliged by the Municipal Corporation stepping into a purely private dispute. Can the Municipal Corporation, in the facts and circumstances of the case, be held to be empowered to issue this notice when it had itself granted development permission on 14th July, 2010 and revised that permission on 15th October, 2013, is the issue before us.

21. Mr.Dhakephalkar's arguments overlook the fact that the Municipal Corporation may have stepped in earlier and i.e. in March, 2011 or 8th April, 2011, but, surely, both the stop-work notices and the communications preceding thereto, of the Municipal Corporation, are expressly set aside by this court. Once they were set aside and the development permission has been revised later on, namely, 15th October, 2013, then, there is no legal justification for issuing the

impugned stop-work notice. All the more, when preceding such issuance, there was a substantive suit filed by the fifth respondent and pending in the trial court. He should have obtained reliefs, interim as also final in that suit and then, the Municipal Corporation would be obliged to abide by the same. At this stage, we do not find any justification for issuing the impugned stop-work notice.

22. Our attention has been invited by both sides and extensively to section 267 of the Act of 1949. That reads as under:-

"267. (1) If the Designated Officer is satisfied that the erection of any building or the execution of any such work as is described in section 254 has been unlawfully commenced or is being unlawfully carried on upon any premises he may, by written notice, require the person directing or carrying on such erection or execution to stop the same forthwith.

(2) If such erection or execution is not stopped forthwith, the Designated Officer may direct that any person directing or carry on such erection or execution shall be removed from such premises by any police officer and may cause such steps to be taken as he may consider necessary to prevent the re-entry of such person on the premises without his permission.

(3) The cost of any measure taken under sub-section(2) shall be paid by the said person."

23. The argument of Mr.Anturkar is that this section refers to another provision namely section 254 of the same Act and therefore, it will have to be read together with that section and other provisions harmoniously and so read, it does not empower the Municipal Corporation to proceed against a completed act and of the nature referred in the subject stop-work notice.

24. On the other hand, the Municipal Corporation as also Mr.Dhakephalkar takes a stand that if the term employed is "unlawfully executed" or "unlawfully carried on", then, that will take within its import all activities and we cannot restrict the applicability of the provision to only incomplete or ongoing acts as is suggested.

25. We do not think that in the facts and circumstances of this case, it is necessary to resolve this controversy. This larger controversy can await a decision in an appropriate case. In the present case, we can rest our conclusion on facts. The facts emerging and peculiar to this case do not enable the Municipal Corporation to issue the subject stop-work notice is our conclusion. We have reached that by adequate reasoning in the foregoing paragraphs.

26. We have also found that Condition Nos. 19 and 20 of the CC cannot be relied upon to issue the subject stop-work notice. The phraseology and wording of these conditions would denote that the conditions would come into play at the stage of grant of full completion certificate or when part or full occupation certificate is sought. At that time, the Municipal Corporation expects that there ought to be no pending issue of measurement, much less a dispute regarding which the Municipal Corporation would be targeted by the parties. When we

come to the conclusion that the stop-work notice also cannot be justified on the touchstone of these conditions, we are not suggesting that the Municipal Corporation is helpless or powerless. The other legal provisions could be resorted to, particularly in the planning law and it can also take appropriate steps as permitted so as to deal with a situation when the petitioner or the occupiers, despite being locked in a pending civil dispute, seek partial or full completion certificate or OC. The Municipal Corporation can ensure, by appropriate measures, that it does not get dragged into litigation and particularly the civil suit which is instituted by the fifth respondent. Depending upon the orders, interim as also final therein, the Municipal Corporation can put such conditions as are consistent with the phraseology and wording of these CCs. In other words, the parties can be called upon to furnish indemnities so as to completely indemnify the Municipal Corporation insofar as the private disputes are concerned. All such steps and measures can be taken by the Municipal Corporation irrespective of our conclusion in this writ petition and our disinclination to sustain the stop-work notice.

27. As a result of the above discussion, the writ petition succeeds. The stop-work notice dated 22nd June, 2016 is quashed and set aside. All consequences in law thereafter shall ensue subject to the clarification given above. Rule is made absolute accordingly. In the circumstances, there would be no order as to costs.

28. Needless to clarify that any order passed by the authorities under the MLRC is always subject to the substantive proceedings and particularly a civil suit. In this case, a substantive suit is pending. In the circumstances, the authorities will have to abide by the outcome of the suit.