

(2012) 02 BOM CK 0116

In the Bombay High Court

Case No : Writ Petition No. 4418 of 2011

Nagpur Municipal Corporation

APPELLANT

Vs

Pandurang Sawarkar

RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

City of Nagpur Corporation Act, 1948 — Section 286, 286(1), 286(2), 286(3), 384
Maharashtra Regional and Town Planning Act, 1966 — Section 149, 44, 53, 53(1),
53(3)
Nagpur Improvement Trust Act, 1936 — Section 52

Citation : (2012) 4 ALLMR 270 : (2012) 6 BomCR 337 : (2012) 3 MhLj 306

Hon'ble Judges : Vasanti A. Naik, J

Bench : Single Bench

Advocate : J.B. Kasat, for the Appellant; S.D. Khati, for the Respondent

Final Decision : Allowed

Judgement

Smt. Vasanti A. Naik, J.—Rule. Rule made returnable forthwith. The petition is heard finally with the consent of the learned counsel for the parties.

2. The issue that arises for consideration is whether a person served with a notice u/s 53(1) of the Maharashtra Regional and Town Planning Act, 1966 (herein after referred to as the "MRTP Act" for the sake of brevity) can approach the District Judge u/s 286(3) of the City of Nagpur Corporation Act, 1948 (hereinafter referred to as the "Corporation Act" for the sake of brevity) for extension of the notice period in the notice issued u/s 53(1) of the MRTP Act.

3. The petitioner-Nagpur Municipal Corporation had issued a notice to the respondent under the provisions of Section 53(1) of the MRTP Act asking the respondent to demolish the unauthorized construction within a period of one month failing which, the Corporation would take necessary action against the respondent. On receipt of the notice u/s 53(1) of the MRTP Act, the respondent filed an application before the District Judge, Nagpur u/s 286(3) of the Corporation Act for extension of the notice period. It was stated in the

application that an extension of 90 days to the notice period was required for taking appropriate steps for questioning the notice u/s 53 of the MRTP Act. The Corporation filed the reply and raised a preliminary objection to the tenability of the application u/s 286(3) of the Corporation Act. It was the case of the Corporation that the notice was issued by the Corporation u/s 53(1) of the MRTP Act and not u/s 286(1) of the Corporation Act and, hence, there was no question of seeking extension of the notice period by taking recourse to the provisions of Section 286(3) of the Corporation Act. The District Judge-3, Nagpur overruled the objection raised by the Corporation and held that it had jurisdiction to entertain and decide the application u/s 286(3) of the Corporation Act. The order passed by the learned District Judge-3, Nagpur on 21.06.2011 is impugned in the instant petition.

4. Shri Kasat, the learned counsel for the petitioner submitted that the learned District Judge had no jurisdiction to entertain the application filed by the respondent u/s 286(3) of the Corporation Act for seeking the extension of the notice period in the notice issued u/s 53 of the MRTP Act. It is submitted on behalf of the petitioner that the provisions of Section 53 of the MRTP Act provide that a person aggrieved by the notice u/s 53(1) can file an application u/s 44 of the MRTP Act for permission for the retention of any building or works and the respondent could have resorted to the remedy u/s 44 of the MRTP Act specially when in view of the provisions of Section 149 of the MRTP Act an order or a notice issued by an authority under the provisions of the MRTP Act is held to be final and is not liable to be questioned in any suit or other legal proceedings. The learned counsel for the petitioner submitted that only a person aggrieved by the notice u/s 286 of the Corporation Act is entitled to file an application before the District Judge for extension of the notice period u/s 286(3) of the Corporation Act and since the notice in this case was issued u/s 53 of the MRTP Act, the respondent could not have resorted to the provisions of Section 286(3) of the Corporation Act. The learned counsel for the petitioner submitted that the impugned order passed by the learned District Judge on 21.06.2011 suffers from a jurisdictional error and is liable to be set aside.

5. Shri Khati, the learned counsel for the respondent, had nothing to say on the merits of the matter and submitted that the writ petition is liable to be disposed of without considering the submissions made on behalf of the petitioner as the extended period of notice has also expired during the pendency of the petition and the question raised in this petition is merely academic. The learned counsel for the respondent sought for the dismissal of the writ petition.

6. It appears that the District Judge is, as of a routine, entertaining the applications filed by persons receiving notice u/s 53 of the MRTP Act, u/s 286(3) of the Corporation Act and by the time the Corporation challenges the order passed by the District Judge u/s 286(3) of the Corporation Act, the extended period of notice expires and the cause for filing the writ petition is rendered infructuous. Several such petitions are disposed of in view of the fact that the

extended notice period expires during the pendency of the writ petition or before the respondent is served and heard in the matter. It is in this background that the counsel for the petitioner insisted that the issue involved in this writ petition be decided though the period of notice, as extended by the learned District Judge has expired in this case also.

7. For answering the issue involved in this case, it would be necessary to consider the provisions of Section 53 of the MRTP Act and Section 286 of the Corporation Act. Section 53 of the MRTP Act empowers the planning authority to serve on the owner a notice, requiring him, within such period, being not less than one month, to take such steps as may be specified, in the notice where the noticee has carried out unauthorised development or use of the premises. The notice u/s 53 may require the owner to restore the land to the condition existing before the said development took place. Sub-Section 3 of Section 53 stipulates that a person aggrieved by the notice may apply for permission u/s 44 of the MRTP Act for retention on the land of any building or works or for the continuance of any use of the land to which the notice relates. Section 149 of the MRTP Act provides that an order or notice issued by any Regional Board or Planning Authority shall be final and shall not be questioned in any suit or any other legal proceedings. Thus, Section 149 of the MRTP Act gives finality to the orders and the notices issued by the planning or the development authority under the Act.

8. After considering the relevant provisions of the MRTP Act, it would be necessary to consider the provisions of Section 286 of the Corporation Act. The provisions of Section 286(1) provide for the issuance of notice requiring the owner to pull down or remove the works or building erected or re-erected in contravention of the town planning scheme or building bye-laws. The provisions of Sub-Section 3 of Section 286 of the Corporation Act empower the Commissioner to pull down or remove the work in question, in case the person fails to comply with the notice before the expiry of twenty-eight days, or such longer period as the District Court may, on the application of the person, allow. Thus, the provisions of Section 286(3) contemplate an application by the person served with a notice u/s 286(1) for extension of the notice period. Though the provisions of Section 286(3) contemplate the filing of an application for extension of the notice period before the District Court, there is absence of a similar provision in the MRTP Act. Section 53 of the MRTP Act provides that an application u/s 44 of the MRTP Act could be made for retention of any building or works on the land. The notice period provided u/s 53(1) of the MRTP Act is one month or more and the person aggrieved by the notice has enough time to approach the State Government u/s 44 of the MRTP Act.

9. Though the provisions of Section 149 of the MRTP Act give finality to the orders and the notices issued under the MRTP Act and bar civil suit or legal proceedings, the notice u/s 286 of the Corporation Act can be questioned in a civil suit. It would be necessary to refer to the decision reported in Girish

Manohar Wazalwar Vs. Purushottam Parasram Kotangale, in this regard. This court has held in the said reported judgment that the jurisdiction of a civil court to try a suit challenging the bonafides and jurisdiction of the Nagpur Improvement Trust in issuing the notice u/s 286(2) of the Corporation Act read with Section 52 of the Nagpur Improvement Trust Act is not barred either expressly or impliedly. It appears that under the provisions of Section 384 of the Corporation Act, a suit could be instituted against the Corporation and/or any of its officers or servants only if one month's notice in writing has been served at the Corporation office or at the residence of the officer or servant of the Corporation. It is in this background that a person served with a notice u/s 286 of the Corporation Act is required to seek the extension of the notice period from the District Court u/s 286(3) of the Act before filing the suit. During the extended period of notice, the person served with a notice u/s 286 normally issues a notice u/s 384 of the Corporation Act to the Corporation or its officers and servants and then institutes a suit challenging the notice u/s 286 of the Corporation Act. However, in the absence of similar provisions in the MRTP Act a person served with a notice u/s 53 of the MRTP Act is not required to wait until any notice is served on the planning authority before the permission to retain the building or works is sought u/s 44 of the MRTP Act. In any case, the provisions of sub-Section (3) of Section 286 of the Corporation Act cannot be resorted to for seeking extension of notice period u/s 53 of the MRTP Act, when the schemes of both the Acts are distinct and separate. After the coming into force of the MRTP Act, a person served with a notice u/s 53 of the MRTP Act is not entitled to file an application u/s 286(3) of the Corporation Act, for seeking the extension of the notice period. The learned District Judge committed a serious error in relying on the judgment reported in Girish Manohar Wazalwar Vs. Purushottam Parasram Kotangale, for holding that the jurisdiction of the District Judge was not barred u/s 286(3) of the Corporation Act, when the issue in regard to the objection raised before the learned District Judge and involved in this petition did not fall for consideration in that case. The learned District Judge was also not justified in observing that the respondent was required to serve a notice u/s 384 of the Corporation Act to the authorities before approaching the court and that he would suffer irreparable loss in case the notice period is not extended. The learned District Judge ought to have considered that a civil suit was not tenable against a notice issued u/s 53 of the MRTP Act in view of the provisions of Section 149 of the said Act and hence there was no question of service of notice u/s 384 of the Corporation Act to the concerned authority.

10. It is clear from a reading of the provisions of the MRTP Act and the Corporation Act that the District Judge, Nagpur, did not have jurisdiction to entertain the application u/s 286(3) of the Corporation Act for extension of period of notice issued u/s 53 of the MRTP Act.

11. Hence, for the reasons aforesaid, the writ petition is allowed. The impugned order dated 21.06.2011 is quashed and set aside.

12. Rule is made absolute in the aforesaid terms with no order as to costs.