
(2013) 07 BOM CK 0126

In the Bombay High Court

Case No : Public Interest Litigation No. 53 of 2013

Sandeep Sharadchandra Thakur

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Maharashtra Regional and Town Planning Act, 1966 — Section 44, 45, 45(1), 46, 52

Citation : (2013) 5 ABR 144 : (2013) 5 ALLMR 573 : (2013) 6 BomCR 167

Hon'ble Judges : S.C. Gupte, J;D.Y. Chandrachud, J

Bench : Division Bench

Advocate : Sandeep S. Thakur, Petitioner in person, for the Appellant; Jaydeep Deo, AGP for Respondent no. 1, Mr. Sandeep V. Marne for Respondent no. 2, Mr. P.P. Chavan and Mr. Kiran Gandhi instructed by y Little and Co. for Respondent no. 3, Mr. A.A. Kumbhakoni instructed by y A.M. Kulkarni for Respondent no. 4, Mr. P.K. Dhakephalkar instructed by y Mr. A.S. Patil for Respondent no. 5, Mr. K.S. Dewal and J.M. Joshi for Respondent no. 7 and Mr. R.S. Datar, for the Respondent

Final Decision : Disposed Off

Judgement

D.Y. Chandrachud, J.—Rule. Learned counsel for the Respondents waive service. By consent, the Rule is made returnable forthwith. The writ petition is taken up for hearing and final disposal, by consent and on the request of learned counsel. The petition has been filed in the public interest by a citizen who is a resident of Navi Mumbai. The Petitioner has stated that he has been actively involved in social causes and is also a Vice President in a multi-national company. The grievance of the Petitioner relates to encroachments made on lands belonging to City and Industrial Development Corporation (CIDCO), the Fourth Respondent, and Maharashtra Industrial Development Corporation (MIDC), the Third Respondent. The Fifth Respondent is a Minister in the State Government holding the portfolio of Excise and Non-conventional Energy. The Sixth Respondent is a trust registered under the Bombay Public Trusts Act. The Seventh Respondent is a nephew of the Fifth Respondent and a trustee of the Sixth Respondent.

2. The encroachment in respect of the CIDCO property consists of a bungalow which is described as a glass house. CIDCO has stated in its affidavit-in-reply that the plot in issue is formed out of old survey no. 456-A admeasuring 62 acres. Though the Petitioner had described the plot as Plot no. 27, CIDCO's affidavit clarifies the correct description of the plot. The land, as stated by CIDCO, falls under the no development zone and is described as "Khajan" land into which sea water would flow. Hence the land would also be affected by the Coastal Regulation Zone. According to the reply filed by CIDCO, there were originally some old chawl like structures standing on the land. The land was handed over to the CIDCO for the purposes of planning and development when the authority was constituted as the new town development authority for Navi Mumbai under the Maharashtra Regional Town Planning Act, 1966 under a possession receipt dated 30 June 1973. In 1992, Navi Mumbai Municipal Corporation came into existence and is now designated as the planning authority for the area.

CIDCO has stated that it has not granted either a no objection certificate or any permission for development or construction on the plot. However, according to CIDCO, since the Municipal Corporation is now the planning authority, it is for the latter to take action.

3. An affidavit has been filed on behalf of Navi Mumbai Municipal Corporation, the Second Respondent, by the Deputy Municipal Commissioner in which it has been stated that the CIDCO property is assessed for municipal taxes in the name of the Seventh Respondent since 1 January 1992. A copy of the assessment extract has been annexed to the affidavit. The Municipal Corporation has also not granted permission for the construction.

4. The contention of the Petitioner is that the land has been encroached upon and a structure has been erected thereon by the Fifth and/or Seventh Respondents brazenly and without any permission.

5. The affidavit of the Seventh Respondent purports to state that the structure belongs to him and is not situated on land belonging to CIDCO. According to the Seventh Respondent, a body by the name of "Maharashtra Merry Time Board" (sic), presumably the Maharashtra Maritime Board, had allotted the plot at Ulwe creek long back for the storage of sand. According to him, the structure has been in existence prior to the incorporation of Navi Mumbai Municipal Corporation. The affidavit of the Seventh Respondent does not either annex any letter of allotment nor for that matter has the Seventh Respondent even stated that there was any permission for the erection of the structure. No permission has been produced.

6. Even assuming, as the Seventh Respondent submits, that land was allotted to him for the storage of sand, that would not justify or furnish authority for the construction of a structure (such as the residential structure in question) without any permission. Moreover, it is clear from the affidavit filed by CIDCO that

possession of the land was given to CIDCO on 30 June 1973 for the purposes of planning and development. In any event, the construction of the structure is completely illegal and without the authority of law. The planning authority namely the Navi Mumbai Municipal Corporation has stood by, waited and watched as a completely illegal structure was put up without any requisite permissions. The brazen manner in which a violation of the law has taken place makes it evident that such violations cannot take place without the complicity of the planning authority. Evidently those who are vested with the duty to ensure proper planning and development of the urban township of Navi Mumbai have failed in discharging their obligations.

7. Counsel for the Fifth Respondent stated that the structure does not belong to his client but to his nephew, the Seventh Respondent and that the visits of the Fifth Respondent were to his office at a nearby location. In response to a query under the Right to Information Act, the Petitioner was informed by the Police authorities on 2 April 2013 that between 1 October 2012 and 31 October 2012, police escort was provided to the Fifth Respondent on seventy two occasions at the Glass house in Sector-15. Be that as it may, it is evident that neither the Fifth nor the Seventh Respondents have ever secured any permission for constructing the structure.

8. Under sub-Section (1) of Section 44 of the Maharashtra Regional Town Planning Act, 1966, any person intending to carry out development on land has to make an application in writing to the planning authority for permission. Section 45(1) stipulates that on receipt of an application u/s 44, the planning authority may, subject to the provisions of the Act, grant permission unconditionally or subject to conditions or refuse permission, by an order in writing. Section 46 requires the planning authority, while considering an application for permission, to have due regard to the provisions of any draft or final plan or proposal. Section 52(1) makes it an offence to commence, undertake or carry out development without permission. Section 53 provides that where development of land has been carried out as indicated in Section 52(1), the planning authority may serve on the owner a notice, inter alia, requiring the restoration of the land to its condition before the development took place. Section 54 empowers the planning authority to stop unauthorised development. Section 55 empowers the planning authority to direct the removal of unauthorised temporary development summarily.

9. The structure is unauthorised. The law relating to urban planning in the State - the Maharashtra Regional Town Planning Act, 1966 - applies to every person who intends to carry out development. That brazen violations of the nature involved in this case take place in an area where there is a planning authority is clearly indicative of a dereliction of public duties. Worse, there is a malaise which is eating away at the foundation of the system. These violations take place under the very nose of public bodies and such a state cannot come to pass without the complicity of those entrusted with control over the menace of unauthorised

constructions in the urban areas of the State. Nothing can be more destructive of the rule of law than the misplaced belief that some are above the law. No one is above the law. It is time that this Court indicated in no unmistakable terms, both to those within and outside the sphere of public governance that the law brooks no exceptions based on position or affluence.

10. In *Dipak Kumar Mukherjee Vs. Kolkata Municipal Corporation and Others*, , the Supreme Court has cautioned of the danger posed by illegal and unauthorised constructions to planned development. The failure of the State machinery to take prompt action is liable to give rise to the belief among common citizens that planning law is enforced against the poor and violations by those in the corridors of power are ignored. Hon'ble Mr. Justice G.S. Singhvi delivering the judgment of the Supreme Court observed as follows:

8. What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structures not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhugii jhopris belonging to the poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-stored structures raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors.

Taking note of the earlier precedents on the subject, the Supreme Court held that there should be no judicial tolerance of illegal and unauthorised constructions. The same principle has been laid down in another judgment of the Supreme Court in *Esha Ekta Apartments Co-operative Housing Society Ltd. and Others Vs. Municipal Corporation of Mumbai and Others*, . The Supreme Court considered the provisions specifically of Sections 44 and 45 and Sections 52 and 57 of the Maharashtra Regional Town Planning Act, 1966 and observed as follows:

46. An analysis of the above reproduced provisions makes it clear that any person who undertakes or carries out development or changes the use of land without permission of the Planning Authority is liable to be punished with imprisonment. At the same time, the Planning Authority is empowered to require the owner to restore the land to its original condition as it existed before the development work was undertaken. The scheme of these provisions does not mandate regularisation of construction made without obtaining the required permission or in violation thereof.

In these decisions, the Supreme Court has relied upon its earlier precedents including in the following cases:

- (i) Priyanka Estates International Pvt. Ltd. and Others Vs. State of Assam and Others,
- (ii) Dipak Kumar Mukherjee Vs. Kolkata Municipal Corporation WP No. 13815 of 2010, order dated 28 July 2010 (Cal)
- (iii) Shanti Sports Club and Another Vs. Union of India (UOI) and Others,
- (iv) Friends Colony Development Committee Vs. State of Orissa and Others,
- (v) M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others,
- (vi) Manju Bhatia (Mrs) and Another Vs. New Delhi Municipal Council and Another,
- (vii) Pleasant Stay Hotel and Another Vs. Palani Hills Conservation Council and Others,
- (viii) Dr. G.N. Khajuria and others Vs. Delhi Development Authority and others,
- (ix) Virender Gaur and Others Vs. State of Haryana and Others,
- (x) Cantonment Board, Jabalpur and Others Vs. S.N. Awasthi and Others,
- (xi) Pratibha Co-operative Housing Society Ltd. and another Vs. State of Maharashtra and others,
- (xii) Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others,
- (xiii) Purusottam Lalji and Others Vs. Ratan Lal Agarwalla and Others,

11. In the circumstances, we are of the view that a direction would have to be issued to the Second Respondent to remove the structure forthwith. Before doing so, in order to furnish an opportunity to the Seventh Respondent to do so, we asked counsel for the Seventh Respondent as to whether he would be ready and willing to do so. Counsel for the Seventh Respondent states on instructions that the Seventh Respondent is ready to remove the structure, but sought reasonable time to do so.

12. We accordingly permit the Seventh Respondent to remove the structure within a period of two weeks from today, failing which the Second Respondent shall take steps forthwith on the expiry of two weeks from today for demolishing the structure. We direct that the Commissioner of Police, Navi Mumbai shall render all necessary assistance if he is called upon to do so for compliance with these directions. CIDCO shall also initiate steps in accordance with law for resumption of its possession expeditiously and pursue them to their logical conclusion.

13. Insofar as the encroachment on MIDC land is concerned, a letter has been

addressed on 5 February 2013 by the Deputy Engineer of MIDC (Exhibit-I to the petition) indicating the nature of the encroachment after the regional office surveyor had visited the site of Plot No. O.S. 12, MIDC, TTC Industrial Area on 4 February 2013. The extent of the encroachment is summarized in the following chart from the letter:

14. MIDC has filed an affidavit in these proceedings to the effect that there is an encroachment by the Sixth Respondent on open space no. 12 in "C" block of the Trans Thane Creek (TTC) Industrial Area to the extent of 1,119.82 sq. meters. MIDC has stated that the Deputy Engineer of the special planning authority issued a notice on 26 February 2010 under the Maharashtra Regional Town Planning Act, 1966 followed by notices u/s 55 on 8 November 2010 and 8 February 2013. The trustees have denied that there is any encroachment and stated that the temple is old. Here again, the extent of the encroachment and the absence of any permission of MIDC indicates that a property vesting in the MIDC as special planning authority has been encroached upon on a large scale. Apart from issuing notices since 2010, the officials of MIDC have not taken any steps till date. Encroachment on such a massive scale cannot be possible without the complicity and active connivance of the officials of MIDC. The period which has been specified in the notice u/s 55 has already expired but no action has been taken.

15. In the circumstances, we direct MIDC to pursue and take action forthwith in pursuance of the notices which have been issued in accordance with law. If MIDC requires the assistance of the law and order machinery, that shall immediately be made available. We dispose of the petition in the aforesaid terms. The Commissioner of Navi Mumbai Municipal Corporation and the Chief Executive Officer of MIDC shall file reports of compliance with the Registrar (Judicial-I) on or before 16 August 2013. The petition shall be placed for directions on 27 August 2013 for verifying compliance. There shall be no order as to costs.