

Pune Metropolitan Regional Development Authority (PMRDA) Vs. Prakash Harkachand Parakh & Ors.

Civil Appeal No(s). 845 of 2021 arising out of SLP (Civil) No (s). 4322 of 2021 (Diary No. 1282/2020)
2021-03-10 | Rastogi, J.
Repository ID: F2J-C-1990

Full judgment text

Pune Metropolitan Regional Development Authority (PMRDA) Vs. Prakash Harkachand Parakh & Ors.

[Civil Appeal No(s). 845 of 2021 arising out of SLP (Civil) No (s). 4322 of 2021 (Diary No. 1282/2020)]

[Civil Appeal No(s). 846 of 2021 arising out of SLP (Civil) No (s). 404 of 2020]

Rastogi, J.

Civil Appeal @ SLP (Civil) Diary No. 1282/2020

1. Delay condoned.
2. Leave granted.
3. The appellant is primarily aggrieved by an interim order passed by the High Court dated 4th October, 2019 in a writ petition filed at the instance of the 1st respondent pursuant to which the street opened for public use has been restricted on certain terms and conditions which has been referred to in the operative para 17 of the order impugned which is as under:-

"17. However, a balance can always be struck. We, therefore, grant an interim order not in absolute terms as claimed by the petitioner, but as under:

 - (a) There will be an interim order in terms of prayer clause (d) but the communication/order dated 18th January, 2019 will be in abeyance on the condition that the petitioner do not make any construction and keep the portion which is used as private road open to sky. They would also not make any construction immediately adjacent to or abutting the same;
 - (b) This private road will be used by the petitioner together with the societies or the buildings' occupiers along with members of public but only before 8.30 pm in the night and after 5.30 am in the morning. Between those hours, the road will be closed to the public;
 - (c) This private road can be enclosed on both sides by putting up iron gates or boom barriers and placing security personnel;
 - (d) The petitioner will display a notice board on both sides to this effect and allow the members of public to use this road though styled as internal road from 5.30 am in the morning until 8.30 pm in the night;
 - (e) This arrangement will be without prejudice to the rights and contentions of both sides;
 - (f) This will not confer any rights in either parties presently;
 - (g) The usage will not also make the 1st respondent together with the 2nd respondent the absolute owner of the property;
 - (h) In the event any wall has been demolished, so as to protect this road from indiscriminate and uncontrolled so also unrestricted use by the public, then the 1st respondent shall allow the petitioner to reconstruct the wall to the extent it was earlier, but this wall will have the gates or barriers as directed by us.
 - (i) As an added safety precaution, this road will not be used by Heavy vehicles or buses and will be used only by LMVs, two-wheelers and auto-rickshaws. To ensure this, a height barrier may be installed by the petitioner. The costs of the gates/barriers will be borne by the petitioner/societies.
 - (j) There will be no public parking on this road and all parking will be for residents only.
 - (k) This order will operate as an interim arrangement during the pendency of this writ petition."

4. The facts in brief relevant for the purpose manifest that the appellant is the competent authority constituted under Section 18 of the Maharashtra Regional and Town and Country Planning Act, 1966 by the Urban Development Department of Government of Maharashtra. The 1st respondent who owns and possess the subject land in question bearing Survey No. 65A, Hissas admeasuring 37600 sq. meters situated at Village Majri bk, tal Haveli, District Pune decided to develop the residential project.

The lay out plan was submitted by the 1st respondent of the subject land comprised of 12 meters wide pathway road, on the right side of the lay out, from first end to the other end of the project, along with an application under Section 44 of the Maharashtra Land Revenue Code, 1966 to the 2nd respondent and permission was granted for non-agricultural use on terms and conditions of the subject land by order dated 25th September, 2012. The condition No.4 relevant for the purpose is referred hereunder as:-

"4). The maintenance of the open Space and Roads in the Layout should be done by the applicant, otherwise, it should be handed over to the appropriate authority for maintenance. These places and roads should be kept open to all public consumption. Also, the roads should be kept open for use by the neighboring landowners."

5. In furtherance thereof, 1st respondent submitted an application for sanction of the revised lay out and building plans of the subject property to the 2nd respondent, which was approved on the terms and conditions vide Order dated 29th December, 2014/24th February, 2015.

The condition No. 4 of Order dated 25th September, 2012 and No.6 of Order dated 24th February, 2015 are almost parametria and relevant for the purpose in reference to grant of the use of 12 meters road to be made accessible to the public is referred to hereunder:-

"6) The applicant shall maintain the roads and open spaces of the project or else shall hand it over to the competent authority for its maintenance. These open places and the roads shall be open for the use of all the public. Similar roads shall be kept open for the use of the neighbouring /adjacent land owners."

6. It reveals from the record that Shewalewadi Grampanchayat (respondent no. 3) made a representation to the appellant, and raised certain objections.

7. After issuance of notice to the 1st respondent and taking note of the material on record, the appellant directed the 1st respondent to open the access of 12 meters road to the public at large vide its Order dated 4th September, 2018 which came to be challenged by the 1st respondent in Writ Petition No. 11775/2018 and was disposed of with a direction to grant a fair opportunity of hearing to the 1st respondent vide Order dated 16th October, 2018.

8. In pursuance thereof, the matter was examined afresh and after affording an opportunity of hearing, Order came to be passed on 18th January, 2019 with a direction to the 1st respondent that the subject road and open space shall be kept open for the use of general public and also to be kept open for the use of the adjoining(neighbouring) land owners. The relevant part of the order is as under:-

"Considering the above facts, and the approved plans, it is seen that the FSI of an area admeasuring 3838.18 sq.m. under the 12.0 wide internal road has been utilized in the building plans. In the Non Agricultural order No. PMH/NA/ SR/520/2012, dated 25/09/2012 the Collector, Pune has put condition No.4 as under:

"The layout roads and open space shall be taken care of (maintenance) by the applicant, else they shall be handed over to the appropriate authority for maintenance. These road and open space shall be kept open for the use of general public. Also the roads shall be kept open for the use of the adjoining (neighbouring) land owners".

It is mandatory for the developer to comply with this condition. In the public interest and as per sanctioned building permission, the north south 12.0 mtr. wide road shall be opened for the general public by the developer immediately. Else action shall be taken by the Authority to open the road."

9. The same came to be challenged by the 1st respondent in Writ Petition No. 8242 of 2019. The Division Bench of the High Court, pending writ petition, taking note of the submissions by an interim order practically modified and made the ad-hoc arrangement by order dated 4th October, 2019 on its own terms, imposing certain time limits when the subject road would be made available for public use, and when it would be used strictly as an internal road for the occupants of the building. We were informed that the public was using the road throughout till the impugned order was passed by the High Court.

10. The learned counsel for the parties have made their submissions on merits of the writ petition, and also on the legality of the order dated 18th January, 2019. However, we are not dilating on the issue at this stage, as the writ petition is pending consideration before the High Court.

11. The nature of modification which has been made by the High Court vide order impugned dated 4th October, 2019 in the form of an ad-hoc interim arrangement, in our view, is exceeding its jurisdiction, and not within the realm of power of judicial review to be exercised under Article 226 of the Constitution. It is well settled that by an interim order, even the final relief ordinarily should not be granted.

12. Consequently, the appeal succeeds and is accordingly allowed. The order impugned passed by the High Court dated 4th October, 2019 is hereby quashed and set aside. We make it clear that the Writ Petition No. 8242 of 2019 be decided independently without being influenced by the observations made by us in the present order on its own merits in accordance with law. No costs.

13. Pending application(s), if any, stand disposed of. Civil Appeal @ SLP(C) No. 404/2020

14. Leave granted.

15. The civil appeal in terms of the order dated 10th March, 2021 passed in Civil Appeal @ SLP(Civil) Diary No. 1282/2020 stands disposed of. No costs.

16. Pending application(s), if any, stand disposed of.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

Disclaimer: This material is for general information and legal research. It is not legal advice. Verify current law, the operative order and later history, and consult a qualified professional before acting.