

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9602 OF 2014

Babasaheb S/o Vishwanath Thorat and others Petitioners

Versus

The State of Maharashtra and others Respondents

Mr. P.F. Patni advocate for the petitioners
Mr. S.S. Tope GP for Respondent Nos.1 & 3

CORAM : R.M. BORDE &
 P.R. BORA, JJ

Dated : 9th February, 2015.

PER COURT :-

1 The petitioner was issued a notice, as contemplated by section 53(1) of the MRTP Act on 12.4.2013, asking him to demolish the alleged unauthorized construction. The petitioner tendered an application for retention of the construction raised by him and for continuance of its use, in view of subsection 3 of section 53 of the Act on 10.5.2013. The petitioner has been communicated by the Corporation on 13.10.2014 that, his application is still pending and not yet disposed of. The petitioner was directed to provide the plan of construction, structural stability certificate and tender explanation in respect of additional construction raised by him. The petitioner contends that, he has

tendered necessary information to the Corporation and further states that, the additional construction raised by him beyond the plan has been pulled down by him.

2 Since the application tendered by him under section 53(3) has not been dealt with by the Municipal Corporation, mere issuing notice would not affect the entitlement of the petitioner for retention of the building or work or for continuance of the use and the proposed action contemplated by notice u/s 53(1) stands postponed till the decision of such application. The petitioner has also given an undertaking to this Court that, he will himself remove and/or pull down the construction, which would not be regularized by respondent Nos. 2 and 3. Same is accepted.

3 In the facts and circumstances of the case, this petition can be disposed of by directing the respondent Corporation to take the decision on the application tendered by the petitioner u/s 53 (3) of the Act for retention of the building/work and for continuance of its use, as expeditiously as possible and preferably within a period of four months from today.

4 The petitioner would be entitled for retention of the building/work which would be regularized by the Corporation and shall have to pull down additional construction/work, which would

not be regularised.

5 In the event of failure of the petitioner to take appropriate steps, in accordance with the undertaking, within a period of eight weeks from the date of decision of the Corporation, the Corporation shall have liberty to take appropriate steps in accordance with law, apart from approaching this Court for breach of the undertaking given by the petitioner.

6 With the directions as above, writ petition stands disposed of.

7 Needless to point out that the Corporation shall have due regard to provisions of Sec.53 of the Act, while considering the application tendered by the petitioner.

(P.R. BORA, J)

(R.M.BORDE, J)