

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11328 OF 2014

Amolkumar S/o Shrawanlal Modi
Age: 48 years, occu: trade
R/o House No.316,
Padmapani Colony,
Railway Station, Aurangabad

Petitioner

Versus

1 The State of Maharashtra
Through the Secretary to the Government,
Urban Development Department,
Manatralaya, Mumbai

2 The District Collector, Aurangabad

3 Satara Deolai Municipal Council,
Taluka and District Aurangabad,
through its Administrator

4 The Administrator,
CIDCO, Jalgaon Road
Opp Fame Multiplex
Aurangabad

Respondents

Mr.Hemant Surve advocate for the petitioner
Mrs.A.V. Gondhalekar, AGP for Respondent No.1 & 2
Mr. A.K.Tiwari & Mr. V.D. Kadam, advocates for
respondent No.3
Mr.A.S. Bajaj advocate for respondent No.4

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

Dated : 19th January, 2015.

ORAL JUDGMENT

(Per: R.M. Borde, J)

1 Rule. Rule made returnable forth with. Heard finally with the consent of the parties.

2 The petitioner is objecting to the notice issued by the Administrator, Satara Deolali Municipal Council dated 7.12.2014 directing him to dismantle the construction raised over the plot, which according to the Administrator, is violative of the provisions of the Municipal Law as well as MRTP Act.

3 The petitioner owns a plot to the extent of 8716 sq. feet i.e. 810 sq. meters. The counsel appearing for the petitioner informs that, he has raised construction to the extent of four floors i.e. Ground plus Three (G + 1) till this date. The counsel further undertakes, on instructions of his client, who is stated to be present in the Court, that he would not raise further construction, without securing appropriate permission from the Municipal Council. The petitioner also undertakes that, if he has raised any construction over and above permissible limits, he would voluntarily remove the same.

4 Admittedly, there is no permission and sanction of the plan, as contemplated under the MRTTP Act. We do not propose to go into the validity of the action of the petitioner at this stage.

5. In these peculiar facts and circumstances, in order to extend an opportunity to the petitioner, we deem it appropriate to grant liberty to petitioner to approach the Chief Officer of Municipal Council with appropriate application for seeking development permission or regularisation of the construction already raised, as the case may be. If petitioner approaches the Chief Executive Officer within a period of one month from today, the Chief Executive Officer may take appropriate decision within the framework of law, as expeditiously as possible, preferably within a period of three months from the date of receipt of application/request by petitioner. We direct that respondent Chief Executive Officer or the Administrator shall not act upon the impugned notice and shall not take any adverse action, subject however, to the orders those may be passed by the Chief Executive Officer, after extending an opportunity of hearing to petitioner as recorded above, for a period of six months from today. It would also be open for the petitioner to approach appropriate authorities including the State Government for protection of his interest and the action of demolition of

unauthorised structure raised by petitioners shall be dependent upon such decision of the competent authority or by the State Government. It shall not be inferred that this Court has put any stamp of approval or issued any certification as regards such proposed action of the State or the authorities in respect of regularisation of construction and those actions shall be amenable to legal challenge at an appropriate stage.

6. This Court, while directing issuance of notice and granting interim relief, directed petitioners to deposit sum of Rs. 10,00,000/- with the Administrator, Municipal Council. The amount has been directed to be kept in separate account and it is further directed that the said amount shall not be utilised for any other purpose. We maintain the interim directives issued by this Court while granting interim relief. The question of refund of amount deposited by petitioners shall be dependent upon the decision of the Chief Executive Officer in respect of regularisation of construction or of the State Government granting him any concession. It would also be open for the petitioner to approach this Court in the event of occurrence of any cause relating to deposit so made. Petitioner is hereby directed not to raise further construction and not to create any third party interest. Petitioner has tendered undertaking to the effect that he would not create

third party interest and that he would himself remove unauthorised construction raised by him in the event the decision of the Chief Executive Officer or any other forum or authority including State Government goes against him. We accept the undertakings furnished by petitioner.

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

8 Rule is made absolute accordingly.

(P.R. BORA, J)

(R.M.BORDE, J)