

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

926 WRIT PETITION NO. 11484 OF 2014

**RAGHVENDAR NARAYANRAO CHAKURKAR (DR)
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...

Advocate for Petitioner : Mr. Syed G R
Mrs. AV Gondhalekar, AGP for Respondent Nos. 1 & 3;
Mr. AS Bajaj, Adv. For Resp.No.4;
Mr. AK Tiwari, Adv. h/for Mr. Kadam Vilas D. For R/2

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

DATE : 30th January, 2015.

PER COURT :

1) Learned Counsel appearing for petitioner informs that he did not intend to withdraw the petition, however, inadvertently, while passing an order in group of petitions, an order in respect of withdraw of the petition, has been passed.

2) Considering the contentions raised by the petitioner as well as after hearing the respective counsel appearing for the respondents, it appears that inadvertent mistake has occurred in permitting

the petitioner to withdraw the writ petition. In this view of the matter, the order passed by this court on 21.1.2015, is re-called.

3) For the reasons recorded while disposing of Writ Petition No.11361 of 2014 and other companion matters, we pass following order, -

4) On consideration of pleadings and facts disclosed before us in this petition, it is noticed that petitioner has raised excess construction beyond permissible limit and it is evident on the face of record. Petitioner, admittedly, has not secured any permission from the planning authority before carrying out development since the plans of construction have not been approved by the planning authority. The development that has taken place in the case before us, cannot be said to be a development in adherence to law. In these peculiar facts and circumstances, in order to extend an opportunity to 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 petitioner 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.

5) This Court, while directing issuance of notice and granting interim relief, directed petitioner 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 petitioner shall be dependent upon the decision of the Chief Executive Officer in respect of regularisation of their construction or of the State Government granting them 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.

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

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

bdv/