

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8 OF 2015

M/s Aditya Builder & Developers,
A partnership firm
through it's Partner
Aditya Satishkumar Surana
Age: 19 years, occu: business
R/o 24 Nutan Colony, Aurangabad

Petitioner

Versus

1. The State of Maharashtra
through: Secretary,
Urban Development Department,
Mantralaya, Mumbai 32

2 The District Collector, Aurangabad
Collector Office Compound, Aurangabad

3 The City Industrial & Development Corporation
CIDCO, Aurangabad
through it's Administrator

4 Satara – Devlai Municipal Council,
Aurangabad, Taluka & Dist. Aurangabad
through it's Administrator

Respondents

Mr.S.V. Suryawanshi h/f
M P.B. Shirsath advocate for the petitioner
Mrs.A.V. Gondhalekar, AGP for Respondent No.1 & 2
Mr. A.S. Bajaj for respondent No.3
Mr.A.K. Tiwari with Mr V.D. Kadam, advocates 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 forthwith. 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 22.12.2014, directing him to dismantle the construction raised over the plot, which according to the administrator, is violative of the provisions of Municipal Law as well as MRTP Act.

3 The petitioner owns a plot area to the extent of 188.19 sq. meters i.e. approximately 2225 sq. feet. The counsel appearing for the petitioner informs that, he has raised construction to the extent of 2200 sq. feet 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. However, in the facts and circumstances of the case, we deem it proper to relegate the petition to the Chief Officer. The petitioner may tender an appropriate application, seeking development permission or regularization of the construction, within a period of four weeks from today. If the petitioner approaches the Chief Officer with an appropriate application, the Chief Officer may consider the case of the petitioner, after affording opportunity of hearing and shall pass necessary orders.

5 The notice issued on 22.12.2014 shall not be acted upon for a period of six months. The Chief Officer to take appropriate decision pursuant to the steps taken by the petitioner as expeditiously as possible and preferably within a period of six months from today. Till then, no coercive action shall be taken by the Municipal Council. It would be open for the Chief Officer or the Administrator of the Municipal Council to take appropriate action depending upon the decision on the application, which the petitioner proposes to tender, with the planning authority i.e. Municipal Council. By interim order passed by this Court on 24.12.2014, the petitioner has deposited a sum of Rs.10 lakhs,

with the planning authority. This Court has directed the planning authority to keep the amount in a separate account and not to appropriate for any other purpose. The said directions shall remain in force until consideration of the application that would be tendered by the petitioner and it would be open for the planning authority or the administrator to issue appropriate orders in respect of amount deposited by the petitioner towards the deposit.

6 In the event of rejection of the prayer of the petitioner for grant of permission or for regularization, it would be for the Chief Officer to pass appropriate orders relating to the construction raised as well as in respect of the amount deposited by the petitioner.

7 The petitioner shall not raise further construction without prior permission of the Municipal Council.

8 Rule is made absolute accordingly.

(P.R. BORA, J)

(R.M.BORDE, J)