

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3125 OF 2012

Malik Ibrahim Shaikh & Ors. ...Petitioners
vs.
State of Maharashtra & Ors. ...Respondents

CORAM : A.S.OKA, &
A.P.BHANGALE, JJ.
DATE : APRIL 15, 2015

1 Heard the learned counsel for the petitioners
and the learned counsel for the concerned
respondents. The challenge in this petition is
essentially to the construction of a petty shop
which is more particularly described in the
petition. The objections raised by the learned
counsel for the petitioners are basically three
fold. The first objection is that the construction
of the petty shop is made without obtaining
permission of the competent authority and after
giving a notice of demolition, the Solapur Municipal
Corporation cannot purport to regularise the same.
The second contention is that the so called
regularization of the said shop is illegal as the
maximum permissible Floor Space Index (for short

`FSI') of 2.00 was already consumed and that the FSI consumed in the petty shop is not covered by the available FSI. Thirdly, it is submitted that as per the Rules 1 and 2 of Chapter IX of the Schedule to the Maharashtra Municipal Corporations Act, 1949, the erection of the petty shop could not have been made on a drainage line without prior permission of the Municipal Commissioner. He submitted that the plan dated 5th January 2011 which is relied upon is not sanctioned by the Municipal Corporation.

2 We have perused the additional affidavit filed by Shri Balu Bhanudas Bhosale on behalf of the Solapur Municipal Corporation. Shri Bhosale is at present working as a Junior Engineer in the Building Permission Department. In paragraphs 3, 4 and 5 of the affidavit he has given a break up of the FSI. He has stated that FSI of 2.00 was fully consumed while granting the building permission No. 573 dated 9th June 1988. He has further stated that for regularising the petty shop, as per the Regulation No. 33.2 of the Development Control Regulation, for the area of a passage (2.45 X 2.13 meters), premium was charged and revised building permission was issued bearing No. 1574 dated 5th January 2011. Therefore, we find no merit in the contention of the learned counsel for the petitioners that by allowing regularization of the petty shop, maximum permissible FSI of 2.00 was allowed to be exceeded.

3 After the construction of the petty shop was regularized by the Municipal Corporation, now the

petitioners cannot make a grievance about the failure to implement the demolition notice.

4 As far as the contention regarding covering of the drainage line is concerned, in the paragraph 2 of the affidavit, Shri Bhosale has stated that some part of the drainage line is below the petty shop. He has however stated that the chamber of the drainage line is outside the petty shop and, therefore, cleaning and maintenance of the drainage line is possible.

5 As far as non compliance with the Rules 1 and 2 of Chapter IX of the Schedule to the said Act is concerned, the Municipal Commissioner will have to look into the said aspect.

6 Hence, there is no reason to entertain this petition filed under Article 226 of the Constitution of India. The learned counsel for the petitioner tried to make a grievance regarding non availability of proper access due to construction of the petty shop. The said contention cannot gone into in this Writ Petition. If the petitioners have any right of way, they will have to establish their right by approaching the appropriate forum.

7 However, the issue of non compliance with the Rules 1 and 2 of Chapter IX of the Schedule to the said Act of 1949 is kept open. The Commissioner of the Solapur Municipal Corporation shall look into the said aspect and pass an appropriate order in

accordance with law. After hearing all the parties concerned, appropriate order shall be passed within a period of three months from today.

8 The petition is accordingly disposed of.

9 All concerned to act upon an authenticated copy of this order.

(A.P.BHANGALE,J.)

(A.S.OKA,J.)