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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11271 OF 2013

Attaulla Md. Shafi Ghazi and Ors.

... Petitioners

Vs.

The State of Maharashtra and Ors.

... Respondents

Mr. Sumit S. Kothari, for the Petitioners.

Mr. V.S. Gokhale, AGP, for the Respondent No.1.

Mr. Rameshwar Navanath Gite, for Respondent No.3.

**CORAM : A.S. OKA &
A.K. MENON, JJ.**

DATE : 8th JANUARY, 2015

PC.

. Heard the learned counsel appearing for the Petitioners and the learned counsel appearing for the third Respondent. Notice for final disposal was issued on 9th July, 2014.

2. The issue involved in this Petition under Article 226 of the Constitution of India is a very limited issue. The Petitioners made an application on 16th May, 2011 to the second Respondent Municipal Council for grant of development permission under Section 44 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTTP Act”). The challenge in this Petition under Article 226 of the

Constitution of India is to the letter dated 31st January, 2012 issued to the Petitioners by the Chief Officer of the second Respondent Municipal Council. In the said letter, it is stated that the third Respondent has filed a Regular Civil Suit No.127 of 2011 in respect of the property subject matter of the application for development permission. It is further stated that in view of the pendency of the Suit, the application for development permission cannot be entertained. A copy of the plaint filed by the third Respondent has been annexed to the Petition which shows that the third Respondent is claiming to have become the owner of the said property by adverse possession.

3. Yesterday, we had granted time to the third Respondent to ascertain whether any ad-interim or interim relief has been granted in the Suit which prevents the Municipal Council from considering the application made by the Petitioners for grant of development permission. Today, the learned counsel appearing for the third Respondent on instructions states that some of the Petitioners have evaded the service of summons and they are not appearing in the Suit. He stated that though there is no ad-interim or interim relief granted in the Suit, the application for temporary injunction is still pending.

4. The submission of the learned counsel appearing for the Petitioners is that in fact the suit property subject matter of the Suit is not the one in respect of which the application for development permission was made. He submitted that in any event, as there is no ad-interim or interim relief granted in the Suit, the Municipal Council will have to consider the application for grant of development permission in accordance with law. The learned counsel appearing for the third Respondent submitted that if a permission is granted and the construction proceeds, the Suit will become infructuous.

5. We have carefully considered the submissions. The Suit filed by the third Respondent proceeds on the footing that he has become the owner by adverse possession in respect of an area of 29 Ares. Thus, the third Respondent is not disputing the title of the Petitioners but is claiming title by adverse possession. Admittedly, as of today, there is no interim or ad-interim relief granted by the Civil Court restraining the Petitioners from carrying out any construction or restraining the Petitioners from making any application to the Municipal Council for seeking development permission. So long as there is no such ad-interim or interim relief granted, the second Respondent Municipal Council can always consider the application for grant of development permission in accordance with law and the same cannot be rejected only on the ground that the Suit is pending.

6. The contention of the third Respondent is that as some of the defendants evaded the service, the application for temporary injunction could not be heard. We, therefore, propose to grant a reasonable time to the third Respondent to prosecute the said application. If there is no ad-interim or interim relief granted by the Civil Court restraining the Petitioners from carrying on construction within the time stipulated by this Court, the application for development permission will have to be considered by the Municipal Council. As regards the contention that the land subject matter of Suit is not the subject matter of application for development permission, it is not possible for us to go into the disputed questions as regards the identity of the land.

7. Accordingly, only because Civil Suit is pending in respect of the land for which development permission is sought, the Planning Authority cannot refuse to process the application unless there is a prohibitory order of the Civil Court or unless there is statutory embargo on consideration of the application. No such statutory embargo is pointed out. Hence, we pass the following order :-

ORDER

- (i) The impugned communication dated 31st January, 2012
(Exhibit “K”) is hereby set aside;

- (ii) If within a period of six months from today, there is no prohibitory order passed by the Civil Court in Suit No.127 of 2011 which prevents the Petitioners from carrying on construction or which prohibits the Petitioners from making an application for grant of development permission, the application for grant of development permission shall be decided in accordance with law;
- (iii) We make it clear that if no such ad-interim or interim relief is granted by the Civil Court within a period of six months from today, the application for grant of development permission made by the Petitioners shall be decided in accordance with law as expeditiously as possible. It is obvious that if a prohibitory relief is granted against the Petitioners in the Civil Suit within a period of six months from today, the application for grant of development permission will have to be kept pending till the date on which the interim relief ceases to operate;

- (iv) We make it clear that we have made no adjudication on the entitlement of the Petitioners to obtain a development permission. We also make it clear that we have made no adjudication on the merits of the pending Suit;
- (v) The Petition is disposed of on above terms;
- (vi) All concerned to act upon the authenticated copy of this order.

(A.K. MENON, J)

(A.S.OKA, J)