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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
WRIT PETITION NO.6400 OF 2012

Rajendra Bhagwat Salunkhe through
the Power of attorney holder
Shri Shivaji Padule ...Petitioner
vs.
Pimpri-Chinchwad Municipal
Corporation and another ...Respondents

Mr.Uday Warunjikar for the petitioner
Mr.R.S.Apte, Senior Advocate i/b Mr.Deepak More for
the respondent No.1

CORAM : A.S.OKA, &
A.K.MENON, JJ.
DATE : MARCH 2, 2015

P.C.:

1 By this Writ Petition under Article 226 of the Constitution of India, the petitioner has impugned the action of the first respondent-Municipal Corporation of demolishing his structure on 17th April 2012. The Prayer in this petition is for directing re-construction of the said structure. The petition has been filed by the petitioner who is Constituted Attorney Shri Shivaji Padule. There is a reply filed by Ms Pratibha Bhadane, the Deputy Director of Town Planning of the first respondent-Municipal Corporation. In the said reply, it is contended that the notice was served under section 53 of the Maharashtra Regional and Town Planning Act, 1966 (for short the 'MRTP Act') on the petitioner for removal of the structure in question

on 20th September 2011 and 30th May 2011. To the said affidavit, a copy of notice dated 30th May 2011 issued to the petitioner under section 53 of the MRTTP Act has been annexed. Even a copy of the notice dated 20th September 2011 issued by the Municipal Corporation to the petitioner under section 53 of the MRTTP Act has been annexed. In the affidavit, a specific contention has been raised that in fact the petitioner addressed a letter to the Commissioner of the Pimpri Chinchwad Municipal Corporation on 25th October 2011 in which he has made a reference to the said notice. It is contended that the due process of law has been followed before demolition of the structure.

2 The aforesaid contentions regarding the service of notice and the said letter dated 25th October 2011 have been specifically raised in paragraph 12 of the said reply dated 6th December 2012.

3 There is an affidavit in rejoinder filed on behalf of the petitioner to the said affidavit of one Shri Rajendr B. Sawant dated 12th February 2015. It will be necessary to consider paragraph 14 thereof which deals with paragraph 12 of the reply. The paragraph 14 reads thus:

"14 So far as the averments made in para 12 are concerned, I say that the notice which has been given under Section 53 of the MRTTP Act speaks for itself. No notice was given to me, in addition to this the area which is

mentioned in the said notice is also incorrect. It refers about 68.65 sq ft only. Therefore, the averments made in the said paragraph are denied."

4 Though the surname of the person filing rejoinder is disclosed as Sawant, from the signature made before the Notary Public, it appears that the said affidavit is affirmed by the petitioner himself and not by his Constituted Attorney.

5 When this petition was called out on 15th January 2015, there was a change of Advocate. Time was sought on behalf of the petitioner which was granted as a last chance on 16th February 2015. On 16th February 2015, a copy of the letter dated 25th October 2011 addressed by the petitioner to the Commissioner of the Municipal Corporation was handed over to the counsel for the petitioner, who sought time to take instructions from petitioner as regards the said letter. Only by way of indulgence, this Court adjourned this petition till 25th February 2015. On 25th February 2015, on the prayer made by the learned counsel for the petitioner, again time was granted till today.

6 The learned counsel for the petitioner today states that the petitioner himself has not responded but his Constituted Attorney Shri Shivaji Padule is present in the Court. He states that a photo copy of the said letter dated 25th October 2011 is shown to Shri Padule. He stated that though the

Constituted Attorney of the petitioner accepts that the letter is written by the petitioner himself, the same does not show that he accepted that any notice has been served upon him. The learned counsel for the petitioner states that the Constituted Attorney of the petitioner wants time of one week. He states that he is unable to support the request made by the Constituted Attorney of the petitioner and therefore, he may be granted discharge.

7 Accordingly, we grant discharge to the counsel for the petitioner. The request made by the Constituted Attorney of the petitioner for adjournment cannot be accepted for more than one reasons.

8 We have perused the letter dated 25th October 2011, a copy of which has been tendered on record. The same is taken on record and marked 'A' for identification. In the first paragraph itself, the petitioner has stated that the first respondent-Municipal Corporation has served him a notice. In the last paragraph on the first page, he has again referred to the notice. He has forwarded five documents along with the said letter to the Commissioner of the Municipal Corporation. The fifth document is a copy of the notice.

9 As stated earlier, in the paragraph 12 of the affidavit in reply filed by the first respondent on 6th December 2012, a specific reliance has been placed on the notices dated 30th May 2011 and 20th

September 2011 issued to the petitioner by the first respondent under section 53 of the MRTTP Act. The copies of the notices have been annexed to the said reply. Paragraph 12 specifically refers to the letter dated 25th October 2011 written by the petitioner himself to the Commissioner of the first Respondent-Municipal Corporation. In the rejoinder dated 12th February 2015 while dealing with the paragraph 12 of the reply, the petitioner has not disputed the letter dated 25th October 2011. As stated earlier, even the Constituted Attorney of the petitioner who is personally present in the Court has accepted that the said letter was written by the petitioner himself. It is pertinent to note that in the said letter, the petitioner has contended that he purchased the land in the year 2005 on which he has constructed the structure. In the said letter, the petitioner has not even contended that he constructed the structure after obtaining a permission of the Competent Authority. Moreover, the fact that the said letter was addressed by the petitioner is not disclosed in the petition.

10 It will be necessary to make a reference to the averments made in the petition. The petitioner is relying upon the letter dated 11th June 2012. By the said letter, under the Right to Information Act, 2005, the petitioner had sought copies of notices dated 20th September 2011 and 30th May 2011. In the petition, the petitioner has not disclosed that he has received the said notices and thereafter, he has addressed a letter dated 25th

October 2011 to the Commissioner of the Municipal Corporation.

11 The remedy available under Article 226 of the Constitution of India is always a discretionary and equitable remedy. The petitioner has indulged in suppression of material facts. Even otherwise, this is not a case where the petitioner should be allowed to invoke the provisions of Article 226 of the Constitution of India. Therefore, we are unable to accept the request of the Constituted Attorney of the petitioner for grant of further time. Writ Petition is accordingly rejected.

(A.K.MENON,J.)

(A.S.OKA,J.)