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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8485 OF 2012**

Pandurang Kandu Mhatre

... Petitioner

Versus

The Municipal Corporation of the
City of Navi Mumbai & Ors.

... Respondents

Mr. R.D. Soni i/by Shri S.M. Gawade and Kamala Bhatt, for the
Petitioner.

Mr. Sandeep V. Marne, for the Respondent No.1.

Mr. Ashutosh M. Kulkarni, for Respondent Nos.2 and 3.

Mr. A.I. Patel, AGP, for Respondent No.4.

**CORAM : A.S. OKA &
V.L. ACHLIYA, JJ.**

DATE : 2nd SEPTEMBER, 2015

P.C.

. Heard the learned counsel appearing for the Petitioner, the
learned counsel appearing for the second and third Respondents and
the learned AGP for the fourth Respondent. The Petitioner claims that
his family was holding agricultural lands bearing Gat Nos.20/5 (part),
23/5, 21/2, 21/9 and 21/13 situated at village Khairane in Navi
Mumbai. The case is that the said lands were acquired by the State

Government for the purposes of setting up of new town of Navi Mumbai. In paragraph 1 of the Petition he has given description of the property held by his ancestors as Survey No.20/23 in Sector 12-D, Koparkhairane (Khairane). In paragraph No.2 he has referred to the property held by his ancestors by Gat numbers which we have quoted above.

2. In paragraph 4, specific case made out by the Petitioner is that there was an old house of the Petitioner's family. The specific averment is that due to ever expanding family, the Petitioner substituted the old house by a new structure. It is contended that as the new structure was on par with the structures adjoining to the Petitioner's property, the Petitioner did not apply for permission of the second Respondent which is the Special Planning Authority for the area. In paragraph 5, the averment is that the Petitioner's family started residing in the newly constructed house. In the same paragraph, a reference is made to the notice 26th September, 2011 issued by the second Respondent under Sub-section (1) of Section 53 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act"). Though paragraph 5 contains an averment that by the said notice, the Petitioner was called upon to stop construction, the perusal of the said notice (Exhibit-A) shows that in fact the said notice calls upon the Petitioner to

remove the structure consisting of brick walls and AC cement sheets admeasuring 17.65 square meters. In paragraph 6, the specific contention of the Petitioner is that on receipt of the said notice, the Petitioner replied on 28th November, 2011 (Exhibit-B) and stated that Survey No.21 mentioned in notice dated 26th September, 2011 was incorrect and in fact the house subject matter of the notice has been constructed on the land bearing Survey No.23 Hissa No.5. The Petitioner in the said reply dated 28th November, 2011 prayed for regularisation of the said structure. In paragraph 7, the Petitioner has made a reference to the subsequent notice under Section 54(1) of the MRTP Act dated 27th August, 2012 (Exhibit-C) by which the second Respondent called upon the Petitioner to stop construction of RCC structure having area of 329.99 square meters. It is stated in the said notice that the construction is in progress on the land bearing Survey No.20/23, Sector 12-D, Kopar Khairane (Khairane). A reply was submitted by the Petitioner to the said notice dated 23rd August, 2012. In the reply, it is stated that the Petitioner was applying for regularisation.

3. The Petitioner is relying upon the representation dated 29th August, 2012 submitted by him to the second Respondent. The said representation at Exhibit-E was for regularisation of the structure

subject matter of notice dated 27th August, 2012. The challenge in this Petition under Article 226 of the Constitution of India is to the aforesaid notices dated 26th September, 2011 and 27th August, 2012. Another prayer is made for directing the second and third Respondents to consider the application for regularisation in the form of representation dated 29th August, 2012.

4. Shri Anil Annasaheb Patil filed a reply on behalf of the second Respondent. In the said reply, a specific stand has been taken that the structure subject matter of notice dated 26th September, 2011 was demolished on 4th April, 2012 and thereafter, an altogether new construction has been made. He has annexed the photographs of the new structure to the reply. The Petitioner has annexed photographs showing the original structure. The Petitioner filed a rejoinder contending that the photographs annexed to the reply are not in respect of the structure of the Petitioner. In the said rejoinder, the Petitioner is relying upon the Resolution dated 3rd October, 2008 passed by the Board of Directors of the second Respondent which provides for a policy of regularisation.

5. The submission of the learned counsel appearing for the Petitioner is that the notice dated 26th September, 2011 contained

incorrect description in as much as the survey number and the name of the village were incorrectly mentioned. He submitted that the said notice was not acted upon and a fresh notice was issued on 27th August, 2012. Inviting our attention to the Resolution passed by the Board of Directors of the second Respondent on 3rd October, 2008 bearing No.9949 he urged that the structures of the project affected persons which were existing in the Gaothan area on the cut off date i.e. 1st May, 2002 are eligible for regularisation. He urged that after service of notice dated 26th September, 2011 there may be some additions made by the Petitioner. He has relied upon the notice dated 4th March, 2014 published by the State Government in exercise of powers under Section 37(1AA) of the MRTP Act by which the Appendix VIII to the Development Control Regulations is sought to be amended. He urged that from the said notification and in particular clause 6.1 of the proposed Appendix VIII it is intended not to demolish the structures erected upto 31st December, 2012. He urged that though the State Government has not sanctioned the modification to the Development Control Regulations in view of the said notification dated 4th March, 2014 the second Respondent is not demolishing the structures erected in Gaothan upto 31st December, 2012. He would therefore submit that representation made on 29th August, 2012 by the Petitioner be ordered to be decided and till that time, the structure may be protected.

6. We have given careful consideration to the submissions. Even according to the case of the Petitioner, as per the existing policy of regularisation which is in the form of Resolution No.9949 dated 3rd October, 2008 passed by the Board of Directors of the second Respondent, the structures existing as of 1st May, 2002 shall be eligible for regularisation.

7. It will be necessary to make a reference to the averments made in paragraph 4 of the Petition, the relevant part of which read thus :-

“4. The Petitioner further states that the Petitioner's family already had a house on the said property consisting of ground plus upper floors. The aforesaid structure was existing since last several years. However, it was constructed in old style and was in dilapidated condition due to wear and tare. The Petitioner states that due to the ever expanding family over the years substituted the said dilapidated structure by a new structure with some additional construction as per their family requirement. The Petitioner states that since the old structure was replaced by a new structure with some additional construction and since the new structure was on par with the structures adjoining to the Petitioner's property, the Petitioner has not applied for a formal permission from the CIDCO due to the fact that it was in substitution of the old structure in

Gaothan area and on par with the adjoining development.”

(underline added)

8. Thus, it is apparent that even according to the case of the Petitioner, he constructed a new structure without obtaining permission of the Special Planning Authority. It is not even the case made out in paragraph 4 that the said structure was constructed on or before the cut off date as provided in the aforesaid Resolution of the Board of Directors of the second Respondent. The Petitioner has not even disclosed the month and/or the year in which the construction of new structure is made.

9. We have perused the notices dated 26th September, 2011 and 27th August, 2012. Though it is the case of the Petitioner that the description of the land with reference to the survey number and the name of the village was incorrectly mentioned in notice dated 26th September, 2011, on conjoint reading of paragraphs 4 to 8 of the Petition, it is apparent that even according to the case of the Petitioner, both notices relate to the structure on the same property. As stated earlier, the area of the structure mentioned in notice dated 26th September, 2011 is only 17.65 square meters which is made up of bricks and cement sheets. The Petitioner did not dispute the area of the

structure mentioned in the notice. In fact, by reply dated 28th November, 2011 the Petitioner claimed regularisation of the said structure. Even in the said reply, the Petitioner did not mention that the structure has been erected by him on or before 1st May, 2002 which is the cut off date. The description of the structure mentioned in notice dated 27th August, 2012 shows that the area thereof is 329.99 square meters and the structure is a RCC structure. There is a reply to the said notice issued by the Petitioner on 23rd August, 2012. Even in the said reply, he has referred to notice dated 26th September, 2011. In the reply issued by the Petitioner to both the notices the Petitioner has not disputed the description, the nature and the area of the structures subject matter of the notices. Thus, going by his own case, the structure of the Petitioner as on 26th September, 2011 was made up of bricks and cement sheets and the area of the structure was only 17.65 square meters. When notice dated 27th August, 2012 was issued the structure was extended to the extent of an area of 329.99 square meters and instead of the structure made up of bricks and cement sheets, a regular RCC structure was found to be constructed. Thus, the size of the structure increased nearly 18 times between November 2011 and August 2012.

10. Even without going into the stand taken by the second Respondent that the structure subject matter of notice dated 26th

September, 2011 was demolished by the said Respondent, from the description of the structure mentioned in the notice dated 27th August, 2012, it is obvious that such a huge RCC structure having area of 329.99 square meters was unauthorisedly and illegally constructed after demolition of the structure made up of bricks and cement sheets.

11. Firstly, it is not the case of the Petitioner that the structure subject matter of notice dated 26th September, 2011 was in existence on the cut off date. Secondly, after notice dated 26th September, 2011 was served to the Petitioner, in a brazen manner, he has constructed a structure having area of 329.99 square meters which is a permanent RCC structure. This structure is admittedly made without obtaining the permission of Planning Authority as disclosed in paragraph 4 of the Petition.

12. The Petitioner is relying upon the notification dated 4th March, 2014. By the said notification issued in exercise of powers under Sub-section (1AA) of Section 37 of the MRTP Act, the proposed modification to the Development Control Regulations has been notified and objections and suggestions to the proposed modifications have been invited. The modification is admittedly not yet sanctioned. Therefore, the Petitioner cannot rely upon the proposed modification of the

Development Control Regulations. The learned counsel appearing for the Petitioner, at this stage, relies upon Section 46 of the MRTTP Act which provides that while considering the proposal for development, even a Draft Development Plan is required to be considered.

13. This is a case where the Petitioner has taken the law into his own hands and has constructed illegal structures at two stages. Initially, the Petitioner applied for regularisation of the structure admeasuring 17.65 square meters subject matter of notice dated 26th September, 2011. Though the said structure was not regularised, by demolishing the same, the Petitioner has constructed a new RCC structure admeasuring 329.99 square meters. Both the structures are not protected by any of the existing policies.

14. The Petitioner himself has placed on record the photographs of the structure taken on 7th April, 2015 along with an affidavit.

15. Considering the high-handed and brazen conduct of the Petitioner of making illegal construction at two stages which is not protected by any existing policies, this is not a fit case where jurisdiction of this Court under Article 226 of the Constitution of India

should be exercised. The conduct of the Petitioner is such that he deserves no sympathy. Accordingly, the Petition is rejected. The learned counsel appearing for the Petitioner prays for extension of order of status-quo granted under order dated 3rd September, 2012. The prayer is opposed by the Respondents. Considering the fact that the order is in force for considerably a long time, the same will continue to operate for a period of six weeks from today.

(VL. ACHLIYA, J)

(A.S. OKA, J)

Certified to be true and correct copy of the original signed
Judgment/order.