

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9250 OF 2015

Mr.Rajesh Patil for the Petitioner
Mr.B.B.Sharma for the respondents

P.C.:

1 Heard the learned counsel for the petitioner. By this petition under Article 226 of the Constitution of India, the petitioner is impugning the notice dated 8th June 2015 issued by the first respondent which is the Planning Authority for a part of the city of Navi Mumbai. The said notice has been issued in exercise of the powers under sub-section (1) of section 54 of the Maharashtra Regional and Town Planning Act, 1966. The impugned notice records that on the date on which the notice was issued, the petitioner had commenced construction to the extent of 295 sq meters. It is stated that the work of RCC footing and columns was in progress. The learned counsel for the first respondent has produced photographs of the said structure which is a part of the letter dated 11th June 2015 addressed by the petitioner herself.

2 The submission of the learned counsel for the petitioner is that provisions of sub-section (3) of section 53 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'the said Act') are applicable to a case where a notice under sub-section 1 of section 54 of the said Act is issued by the Planning Authority. His submission is that in terms of sub-section (3) of section 53, the petitioner has applied by a letter dated 11th June 2015 to the Chief Controller Unauthorised Constructions of the first respondent for regularization of the construction.

3 The submission of the learned counsel for the petitioner is that within the time specified by sub-section (3) of section 53, on 11th June 2015, an application in terms of sub-section (3) of section 53 has been already made, and therefore, the structure subject matter of the impugned notice cannot be demolished in view of the express provision of sub-section (3) of section 53. He states that as of today, the construction of footing and columns of the ground floor has been completed.

4 We have considered the submissions. Sub-section (3) of section 53 reads thus:

“(3) Any person aggrieved by such notice may, within the period specified in the notice and in the manner prescribed, apply for permission under section 44 for retention on the land of any building or works or for the

continuance of any use of the land, to which the notice relates, and pending the final determination or withdrawal of the application, the mere notice itself shall not affect the retention of buildings or works or the continuance of such use."

5 The petitioner could have invoked sub-section (3) of section 53 only by way of making an application in the manner provided under sub-section (1) of section 44. An application has to be made in writing to the Planning Authority in such form and accompanied by such documents as may be prescribed.

6 We have perused the application dated 11th June 2015. The said application is addressed to the Chief Controller of Unauthorised Construction. It records that an application is already made for granting permission to construct a building to the Town Planning Department (Building Construction) of the first respondent and that after a permission is granted by the Town Planning Department, the same will be produced before the Chief Controller of Unauthorised Constructions. This shows that the petitioner has applied for grant of permission and started RCC construction to the extent of 295 sq meters without there being any permission granted by the Planning Authority. There are only three enclosures annexed to the letter dated 11th June 2015. The same are as follows:

- (1) Property tax receipt;
- (2) Permission granted by the Gram Panchyat for

construction of a house; and
(3) A copy of Award.

7 By no stretch of imagination, the application dated 11th June 2015 can be termed as an application made under sub-section 1 of section 44 of the said Act. Therefore, we are unable to agree with the submission made by the learned counsel for the petitioner that a recourse has been taken by the petitioner to sub-section (3) of section 53 of the said Act.

8 As the petitioner has not taken recourse to sub-section (3) of section 53 as provided therein, the petitioner is not entitled to the toleration of the said structure.

9 In any event, the petitioner knew the requirement of obtaining a development permission and therefore, the letter dated 11th June 2015 records that the petitioner had applied for grant of permission to the Planning Authority. Without even waiting for the Authority to grant permission, the petitioner has high handedly and illegally commenced the work of RCC construction. Considering the said conduct of the petitioner, this is not a fit case to allow the petitioner to invoke Article 226 of the Constitution of India. Accordingly, writ petition is rejected.

(G.S.PATEL,J.)

(A.S.OKA,J.)