

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

**WRIT PETITION NO. 10507 OF 2012
WITH
CIVIL APPLICATION NO. 858 OF 2013
IN
WRIT PETITION NO. 10507 OF 2012**

Kaluram Maruti Dange

.. Petitioner

Vs.

Pimpri Chinchwad Navnagar Vikas
Pradhikaran & Ors.

.. Respondents

Mr.P.B. Shah for petitioner and applicant.

Mr.Vijay D. Patil for resplendent no.1.

Mr.G.H. Keluskar for resplendent no.2.

Mr.A.I. Patel, AGP for resplendent nos.3 and 4.

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

DATED : 1ST SEPTEMBER, 2015

P.C.

1 By this petition under Article 226 of the Constitution of India, the challenge is to the Stop Work Noticed dated 12.10.2012 issued by the first respondent-Pimpri Chinchwad Navnagar Vikas Pradhikaran which is constituted as a new down development authority within the meaning of sub-section 3A of Section 113 of the Maharashtra Regional and Town Planning Act, 1966 (for short referred as 'MRTP Act').

2 The petitioner in this petition claims to be the owner of the land more particularly described in paragraph 2(a) of the petition. The petitioner is relying upon the development permission dated 22.08.2011 granted by the 2nd respondent-Pimpri Chinchwad Municipal Corporation under the provisions of Section 45 of the MRTP Act, which reads thus :

45. Grant or refusal of permission:-

(1) On receipt of an application under section 44 the Planning Authority may, subject to the provisions of this Act, by order in writing :-

- (i) grant the permission, unconditionally;
- (ii) grant the permission, subject to such general or special conditions as it may impose with the previous approval of the State Government; or
- (iii) refuse the permission.

(2) Any permission granted under sub-section (1) with or without conditions shall be contained in a commencement certificate in the prescribed form.

(3) Every order granting permission subject to conditions, or refusing permission shall state the grounds for imposing such conditions or for such refusal.

(4) Every order under sub-section (1) shall be communicated to the applicant in the manner prescribed by regulations.

(5) If the Planning Authority does not communicate its decision whether to grant or refuse permission to the applicant within sixty days from the receipt of his application, or within sixty days from the date of receipt of reply from the applicant in respect of any requisition made by the Planning Authority, whichever is later, such permission shall be deemed to have been granted to the

application on the date immediately following the date of expiry of sixty days.

1 [Provided that, the development proposals, for which the permission was applied for, is strictly in conformity with the requirements of all the relevant Development Control Regulations framed under this Act or bye-laws or regulations framed in this behalf under any law for the time being in force and the same in no way violates either the provisions of any draft or final plan or proposals published by means of notice, submitted for sanction under this Act: Provided further that, any development carried out in pursuance of such deemed permission which is in contravention of the provisions of the first proviso, shall be deemed to be an unauthorized development for the purposes of sections 52 to 57.]

2 [(6) The Planning Authority shall, within one month from the date of issue of commencement certificate, forward duly authenticated copies of such certificate and the sanctioned building or *development plans to the Collector concerned.*]

3 It will be necessary to consider Section 48 of the MRTP Act, which reads thus :-

48 Lapse of permission:- Every permission for development granted or deemed to be granted under section 45 or granted under section 47 shall remain in force for a period of one year 4[from the date of receipt of such grant], and thereafter it shall lapse:

Provided that, the Planning Authority, may on application made to it extend such period from year to year; but such extended period shall in no case exceed three years:

Provided further that, if the development is not completed upto plinth level or where there is no plinth, upto upper level of basement or stilt, as the case may be, within the period of one year or extended period, under the

first proviso, it shall be necessary for the applicant to make application for fresh permission.

4 On conjoint reading of the main Section 48 and the first and second proviso thereto, on 21.08.2014 the permission granted under Section 45 of the MRTP Act on 22.08.2011 has lapsed. Therefore, even if this Court interferes with the impugned Stop Work Notice, the petitioner will not be in a position to carry on development work on the basis of the development permission. Therefore, the issue regarding legality and validity of the Stop Work Notice dated 12.10.2012 has become academic which need not be decided at this stage in writ jurisdiction.

5 It appears that there is some dispute about the jurisdiction of the 1st and 2nd respondents to grant development permission under Section 45 of the MRTP Act. The contention of the learned counsel appearing for the petitioner is that no portion of the property for which permission was granted on 22.08.2011 is falling within the jurisdiction of the 1st respondent which is a Special Planning Authority. He is relying upon a judgment and order dated 16/17.07.2015 in Writ Petition No.6695 of 2014 by which the acquisition in relation to the part of the property of the petitioner has been set aside.

6 As the issue involved in the petition has become academic, we dispose of this petition by passing the following order:-

(i) It will be open for the petitioner to make an application for grant of a fresh development permission in respect of the land in question to the appropriate planning authority;

(ii) If such application is made, the appropriate planning authority will decide the said application in accordance with law without being influenced by the impugned Stop Work Notice dated 12.10.2012. It will be open for the petitioner to bring to the notice of the concerned planning authority, the effect of the judgment and order dated 16/17.07.2015 passed in Writ Petition No.6695 of 2014. It is obvious that effect of this order passed by this Court will be considered while passing order by the appropriate planning authority;

(iii) If the petitioner has carried out any construction after lapse of the permission dated i.e., 22.08.2011 or any construction in breach of order of status-quo passed by this Court, it is for the appropriate planning authority to initiate action in accordance with law in that behalf.

(iv) Subject to what is observed above, by keeping all contentions of the parties open, the petition is disposed of.

7 In view of disposal of the writ petition, civil application no.858 of 2013 does not survive and the same also stands disposed of.

(V.L. ACHLIYA, J.)

(A. S. OKA, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgement/Order.