

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11154 OF 2015

Kailash Surendranath .. Petitioner
vs.
State of Maharashtra & ors. .. Respondents

AND

CIVIL APPLICATION NO. 3112 OF 2015

Mazda Mansion Co-op. Housing
Society Ltd. .. Applicant

In the matter between
Kailash Surendranath .. Petitioner

vs.
State of Maharashtra & ors. .. Respondents

AND

CIVIL APPLICATION NO. 3099 OF 2015

Bhisham Sahjwani .. Applicant

In the matter between
Kailash Surendranath .. Petitioner

vs.
State of Maharashtra & ors. .. Respondents

Mr. G.S. Godbole i/b Mr. Vikas Pandey for the Petitioner in Writ
Petition No. 11154 of 2015.

Mr. Vijay Dhingreja for the Applicant in CAW 3099/2015.

Ms Priti Tare for the Applicant in CAW 3112/2015.

Mr. S.D. Rayrikar, AGP for Respondent Nos.1 and 2- State.

Ms M.R. Bhoir for Respondent Nos.3 and 4-BMC.

CORAM : M. S. SONAK, J.

DATE : 7 DECEMBER 2015.

P.C. :-

1] Not on board. Upon production, taken on board.

2] Rule. With the consent of and at the request of learned
counsel for the Respondents, Rule is made returnable forthwith.

3] The challenge in this petition is to the order dated 18 September 2015 made by the Minister (Urban Development) refusing to entertain the Petitioner's Appeal under Section 47 of the Maharashtra Regional and Town Planning Act 1966 (said Act) on the ground that such an appeal is not maintainable.

4] In this case, the Petitioner was served with notice dated 21 December 2011 under Section 53(1) of the said Act in the matter of certain alleged unauthorised construction carried on by him. The Petitioner, in terms of Section 53(3) of the said Act applied for permission under Section 44 of the said Act for retention of the structures. By order dated 26 April 2012, such permission was denied to the Petitioner. Against the same, the Petitioner has instituted an appeal under Section 47 of the said Act to the State Government. By the impugned order, the State Government has refused to entertain the appeal on the ground that the same is not maintainable.

5] Section 53(1) of the said Act empowers the Planning Authority to issue notice for removal of unauthorised development. Section 53(3) of the said Act provides that 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 buildings 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. Section 53(4) of the said Act provides that the foregoing provisions of this Chapter-IV shall, so far as may be applicable, apply to an application made under sub-section (2). Mr. Godbole contends that this should be read as sub-section (3), because sub-section (2) does not contemplate making of an application. Sub-section (2) prescribes purposes for which notice under Section sub-section (1) of Section 53 of the said Act may be issued.

6] Be that as it may, the Petitioner did apply for retention under Section 44 of the said Act. By order dated 26 April 2012, permission under Section 44 was refused. Such refusal, in the facts and circumstances of the present case, can be said to be relatable to the exercise of powers under Section 45 of the said Act. Section 47 of the said Act provides that any Applicant aggrieved by an order

granting permission on conditions or refusing permission under section 45 may, within forty days of the date of communication of the order to him, prefer an appeal to the State Government and such appeal shall be made in such manner and accompanied by such fees (if any) as may be prescribed. In view of such provisions, it cannot be said that the appeal before the State Government under Section 47 of the said Act was not maintainable. Mr. Godbole has placed on record an order dated 23 April 2015 concerning Pimpri Chinchwad Municipal Corporation, where, the Minister (Urban Development) has entertained and allowed an appeal in similar circumstances.

7] This Court, in case of *Sayali Sanjay Malvankar Vs. Chief Officer, Vengurla Municipal Council & ors.*¹, in the context of the provisions contained in the said Act, has made the following observations.

6. Now it is common ground that no application was preferred within a period of 30 days of the receipt of the notice dated 22nd November, 2002. On 4th January, 2003 which was beyond the period of 30 days an application was submitted under Section 44 of the M.R.T.P. Act, 1966. That application was rejected by the Municipal Council on 13th January, 2003. A remedy of filing an appeal is provided under Section 47 of the M.R.T.P. Act against an order granting the permission on conditions or refusing permission under Section 45 of the Act.

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1 2004(5) Bom.C.R.777

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9. *In response to the communication dated 17th September, 2002 of the Municipal Council raising various requisitions, including the fact that no plan of the proposed work of repair had been submitted, no application was made to the Municipal Council and the work of construction was carried out unauthorisedly. Thereupon the Municipal Council was constrained to issue a notice under Section 53(1). Within the period which is prescribed by the aforesaid notice, no application for retention or regularisation was submitted as contemplated by Section 53(3) of the M.R.T.P. Act, 1966. An application was eventually submitted on 4th January 2003. It was rejected by the Municipal Council on 13th January 2003. The order of rejection has not been challenged by way of availing of the remedy of an appeal under Section 47 of the M.R.T.P. Act. Against the order of demolition passed by the SDO, on 31st May 2003, an appeal has been filed under the Land Revenue Code.. ..*

(emphasis supplied)

8] In view of the aforesaid, it does appear that the Minister (Urban Development) has failed to exercise jurisdiction vested in him under Section 47 of the said Act. The impugned order dated 18 September 2005 is, therefore, set aside and the appeal instituted by the Petitioner before the Minister (Urban Development) is restored for consideration on its own merits and in accordance with law.

9] It is made clear that this Court has not examined the merits of the matter and therefore, all contentions of all parties on merits of the matter are kept open to be decided by the Minister (Urban Development), in accordance with law and on its own merits.

10] The Cooperative Society, i.e., Mazda Mansion Cooperative Housing Society and Mr. Bhisham Sahjwani have applied for intervention in this petition. They submit that the unauthorised construction carried out by the Petitioner seriously affects their rights and interests. Now that the matter is being remanded to the Minister (Urban Development), there is no question of permitting their intervention in this petition. However, interests of justice would be met if the Mazda Mansion Cooperative Housing Society is impleaded as a Respondent in the appeal instituted by the Petitioner before the Minister (Urban Development). The Petitioner is, accordingly, directed to implead the said Society as a party Respondent. Insofar as Mr. Bhisham Sahjwani is concerned, it will be open to the said Applicant to apply before the Minister (Urban Development) for impleadment by making out a case in that regard. Such application, if made, will no doubt be considered by the Minister (Urban Development) in accordance with law and on its own merits.

11] The parties are directed to appear before the Minister (Urban Development) on 5 January 2016 and produce the authenticated copy of this order. The Minister (Urban Development) is requested to

dispose of the Petitioner's appeal as expeditiously as possible and in any case, within a period of four months from the date of production of authenticated copy of this order.

12] Rule is made absolute in this petition to the aforesaid extent. There shall, however, be no order as to costs.

13] Civil Applications do not survive and same are also disposed of.

(M. S. SONAK, J.)

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