

Mr. Girish S. Godbole, Senior Advocate i/b. Mr. Indrajeet Kulkarni
and Mr. Jayesh Gawde for Petitioners.
Mr. Mandar Limaye for Respondent-Corporation.

P.C. :

Heard Mr. Girish S.Godbole, learned Senior Counsel for petitioners and Mr. Mandar Limaye, learned Counsel for respondent at length.

2. Leave to delete first sentence of paragraph 5 as also remove pages 85 to 101 from Writ Petition is granted. Amendment shall be carried out forthwith.

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Appeal under Order 43 is not maintainable.

4. Mr. Godbole submitted that petitioners, hereinafter referred to as plaintiffs, have instituted Suit on 16.04.2015 against the respondent, hereinafter referred to as defendant, for declaration that defendant has no right to act upon the notice dated 21.01.2015 issued under Sections 52 and 53(1) of the Maharashtra Regional and Town Planning Act, 1966 (for short 'Act') as the said notice is prima facie illegal, unlawful and / or to take any action against the offending structure set out in that notice (for short 'suit property') or any part thereof and for declaration that the notice dated 21.01.2015 is ultra vires, illegal and bad in law. Plaintiffs also prayed for declaration that unless and until, the proposal of the plaintiffs for regularization is duly considered by the defendant, it has no right to act upon the illegal notice dated 21.01.2015 and / or to cause any damage to the plaintiffs and also sought perpetual injunction restraining defendant, its employees, officers, servants, etc. from demolishing the suit property or any part thereof and /or causing any damage to the suit property and / or dispossessing the plaintiffs from the suit property.

5. On the other hand, Mr. Limaye submitted that petitioners have submitted a proposal for regularization of the offending structure. The respondent considered that proposal and the same was rejected on 08/12/2015. Mr. Godbole submitted aggrieved by this decision, petitioners have instituted Appeal under Section 47 of the Act. Hon'ble Minister for State Urban Development Department has granted stay to the order dated 08/12/2015. Upon taking instructions from petitioner No.1 who is present in the Court, Mr. Godbole states that petitioners have instructed him to withdraw

the Misc. Civil Appeal No. 215 of 2015. He has tendered a photocopy of the identify card of petitioner No.1 on record. The same is taken on record and marked 'X' for identification.

6. In view of the statement made by Mr.Godbole, Misc. Civil Appeal No. 215 of 2015 is allowed to be withdrawn. The impugned order dated 26/11/2015 passed by the learned District Judge stands dissolved. In view thereof, Petition is allowed to be withdrawn and is disposed of accordingly. It is made clear that I have not examined merits of the case. All the contentions of the parties are expressly kept open. Order accordingly.

(R. G. KETKAR, J.)

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