

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

**WRIT PETITION NO.11648 OF 2014
WITH
CIVIL APPLICATION NO.523 OF 2015**

Shaan Education Society's
Guardian College of Dental
Science & Research Centre

.. Petitioner.

Vs.

The State of Maharashtra & Anr.

.. Respondents.

Mr.Ashish Shivajirao Gaikwad for the Petitioner.

Mr.Devendranath S. Joshi for the Applicant in CA No.523/2015.

Mr.S.N. Patil AGP for Respondent No.1.

Mr.Balkrishna D. Joshi for Respondent No.2.

CORAM : A.S. OKA & A.K. MENON, JJ.

DATED : 5TH MARCH, 2015

P.C.

1. Heard learned counsel appearing for the petitioner and the learned counsel appearing for the second respondent and the learned AGP for the first respondent. We have also heard advocate for the intervenor.

2. The petitioner was granted a development permission under section 45 of the Maharashtra Regional and Town Planning Act, 1966 (for short "the MRTP Act"). By the impugned order dated 1st September, 2014 purportedly passed under section 51 of the MRTP Act, the said permission has been revoked. There is a reply filed by the first Respondent. Considering the nature of the

controversy involved, we have forthwith taken up this petition for final disposal.

3. It appears that a show cause notice was issued to the petitioner on 7th August, 2014 calling upon it to show cause as to why the permission granted to the petitioner on 25th June, 2008 should not be revoked. The impugned order dated 1st September, 2014 records that there was no reply or response by the petitioner to the notice. It will be necessary to make a reference to the affidavit in reply filed by the Chief Officer. The reply discloses that subsequently the petitioner made an application for grant of permission. In the reply, the Municipal Council is relying upon the show cause notice dated 29th November, 2010 in which it is stated that as the construction was continued after the expiry of the permission dated 25th June, 2008 the petitioner should show cause as to why the permission dated 25th June, 2008 should not be cancelled. Annexure III to the said reply of the Chief Officer is a letter addressed by the petitioner on 27th February, 2014 in which it is contended that by the year 2008, 80% of the work was completed. It is further stated in the affidavit in reply that the subsequent applications made by the petitioner were not granted. It is pointed out that there is a dispute regarding the title. Reliance is placed on further show cause notices issued on 28th April, 2014 and 7th August, 2014. It appears that the impugned order has been passed on the basis of the notice dated 7th August, 2014.

4. In the reply, it is contended by the Chief Officer that an appeal is available to the petitioner under section 47 of the MRTP Act for challenging the impugned order dated 1st September, 2014. Thus, the affidavit proceeds on a footing that action is taken only under the provisions of MRTP Act. The only provision under the MRTP Act for revocation of a development permission is section 51. Clause (b) of proviso to sub-section (1) of section 51 provides that where development relates to carrying out of any building or the operation, an order of revocation shall not be passed after operations have been substantially progressed or have been completed. It is true that there is no reply filed by the petitioner to the notice dated 7th August, 2014. However, on 27th January, 2014 by a letter, the petitioner had informed the Chief Officer that 80% of the work was completed in the year 2008 itself. The impugned order dated 1st September, 2014 does not hold that the said contention of the petitioner was erroneous and that there was no substantial progress made till 24th June, 2009 when the validity of the permission expired.

5. Before passing the drastic order of revocation of the building/development permission which was already acted upon, an inquiry ought to have been made by the Chief Officer as regards the extent of construction carried out in view of proviso (b) to sub-section (1) of Section 53. The impugned order reflects that no such inquiry is made to ascertain whether the substantial work was

carried out till 24th June, 2009. Only on this ground, we are required to set aside the impugned order. An Appeal under section 47 of the MRTP Act is available only against an order of rejection of development permission. No Appeal is provided against an order section 51.

6. In the affidavit in reply, it is contended that even after expiry of the period of validity of the development permission, the construction was carried out by the petitioner notwithstanding the fact that earlier permission was not extended and that application made for grant of fresh permission was not granted. There are other contentions raised regarding suppression of facts. If the development permission has been obtained by suppressing material facts or on the basis of false or incorrect statement, the Municipal Council has a remedy available under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965. Moreover, if the construction has been illegally carried out after the expiry of the validity of the building permission, the Municipal Council can always take steps for demolition of the illegal construction in accordance with law.

7. Subject to what is observed above, we dispose of the petition by passing the following order :

(i) The impugned order dated 1st September, 2014 is quashed and set aside on the grounds which are set out in the judgment and order. It will be open for the second respondent to pass a fresh order on the show cause notice already served on the petitioner in accordance with law;

(ii) We make it clear that we have not made any adjudication on the legality and validity of the construction carried out by the petitioner. If the Municipal Council finds that the construction is illegal, then the Municipal Council is free to initiate action of demolition in accordance with law. All contentions of the parties in that behalf are kept open;

(iii) If the applications dated 12th January, 2010 and 16th July, 2010 or any other application made by the Petitioner for grant of a fresh permission are still pending with the second respondent - Municipal Council, the said application shall be disposed of expeditiously in accordance with law;

(iv) The petition is partly allowed in the above terms.

(v) In view of the order passed in the main petition, civil application No.523 of 2015 does not survive and it is disposed of.

(A.K. MENON, J.)

(A.S. OKA, J.)