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

WRIT PETITION NO.11916 OF 2013

Shri. Rajendra Shinde

... Petitioner

Vs.

The Pimpri Chinchwad Municipal
Corporation and Anr.

... Respondents

Mr. Uday P. Warunjikar, for the Petitioner.

Mr. Deepak R. More, for the Respondent No.1.

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

DATE : 16th FEBRUARY, 2015

PC.

. Today, the learned counsel appearing for the Petitioner has tendered a rejoinder of the Petitioner dated 16th February, 2015. When we made a query to the learned counsel appearing for the Petitioner as to whether the Petitioner wants to prosecute the Petition considering the material brought on record by the Respondents, on instructions of the Petitioner who is personally present in the Court, he states that the Petitioner wants to prosecute the Petition.

2. The challenge in this Petition under Article 226 of the Constitution of India is to the notice dated 6th December, 2013

addressed to the Petitioner. The notice is under Sub-Section (1) of Section 53 of the Maharashtra Regional and Town Planning Act, 1966. The notice is in respect of the land bearing Survey No.44 at Pimpale Gurav, Pune. The notice is in respect of the illegal structure admeasuring 30 feet x 40 feet consisting of ground + first floor. By the said notice, the Petitioner has been called upon to remove the said structure within a period of one month from the date of service of notice.

3. It will be necessary to make a reference to the averments made in the Petition. In paragraph 5 of the Petition, the Petitioner has made very vague statements. Paragraph 5 of the Petition reads thus :-

“5. The Petitioner invites the attention of the Honourable High Court to refer to the building permissions, which have been granted to the Petitioner. These building permissions and the other permissions, which have been obtained by the Petitioner, are collectively enclosed to the memo of this petition and marked as Exhibit C.”

4. When this Petition came up before this Court on 1st September, 2014, the learned Senior Counsel then representing the Petitioner placed reliance on the certificate dated 7th February, 2007 issued to the Petitioner under the provisions of the Maharashtra Gunthewari Developments (Regularisation, Upgradation and Control) Act, 2001 (for short “the said Act”). The specific contention noted in the

said order is that the said certificate has been issued for regularising the structure subject matter of the impugned notice. Paragraph 1 of the said order reads thus :-

“1. Reliance is placed by the learned senior counsel for the petitioner in these petitions on the certificates under the provisions of Maharashtra Gunthewari Act, 2001 issued by the Pimpri Chinchwad Municipal Corporation regularising the structures subject matter of the said certificates. His submission is that without considering the certificate of regularization, the Municipal Corporation has issued notices under section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 (for short 'the MRTP Act') which are impugned in these petitions. The issue is whether the alleged illegal structures subject matter of notices under subsection (1) of section 53 are the subject matter of the certificates of regularization issued to the petitioner under the Maharashtra Gunthewari Act, 2001. The learned senior counsel petitioner and the learned counsel representing the Municipal Corporation seek time to take instructions on this aspect.”

5. When the Petition appeared before this Court on 11th November, 2014, the learned counsel appearing for the Pimpri Chinchwad Municipal Corporation tendered on record written instructions in this Petition as well as in connected Petition No.11917 of 2013. It was specifically stated in the written instructions that the certificate of regularisation as well as the plan relied upon by the Petitioner have not been issued by the Municipal Corporation. In view of the said documents that this Court directed the Petitioner to produce the original certificate and the original plan.

6. Thereafter, an affidavit was filed by Shri G.M. Dangat, the Executive Engineer of Ward – D on 24th November, 2014. In the said affidavit, following categorical statements have been made :- (1) the structure subject matter of the notice has been constructed on a land reserved in sanctioned Development Plan and (2) no order dated 7th February, 2007 of regularisation under the said Act has been passed by the Municipal Corporation or by any of its officer. After perusal of the said affidavit, this Court passed an order dated 8th December, 2014.

Paragraphs 2 and 3 of the said order read thus :-

- “2. Today, the learned Counsel appearing for the Petitioner has produced for perusal of the Court the original regularization certificate dated 7th February 2007 which appears to have been signed by some officer on behalf of the Executive Engineer of the Municipal Corporation. He has also produced for perusal of the Court the remarks of the Surveyor of D-Ward dated 1st February 2007. A plan which is signed on behalf of the Executive Engineer is also produced for perusal of the Court. Lastly, NA permission dated 13th March 2008 allegedly issued by the Sub-Divisional Officer, Pune is also produced.
3. After perusal of the said documents, we have returned the same to the learned Counsel for the Petitioner. The Petitioner shall visit the office of Shri G.M. Dangat, Executive Engineer, D-Ward, of the 1st Respondent-Corporation on 15th December 2014 at 11.00 a.m. The Petitioner shall produce the said four original documents for perusal of Shri Dangat, who will file an additional affidavit as regards the genuineness of the said documents after taking inspection of the said documents.”

7. There is another affidavit dated 17th December, 2014 filed by Shri G.M. Dangat. Paragraph 3 of the said affidavit reads thus :-

“3. I say that in the present Petition the Petitioner attended my office on Dt.11/12/2014 and produced before me the following documents for verification from the records available in my office, (1) order dated 07/02/2007 passed under the provision of the Maharashtra Gunthewari Act, 2001 vide order bearing No.DW/CIVIL/KAVI/GUNTHER/4752/2007 dated 07/02/2007. (2) Copy of sanctioned plan bearing No.DW/CIVIL/KAVI/GUNTHER/4752/2007 dated 07/02/2007 bearing signature of person purportedly authorized for Executive Engineer of the Corporation. With regard to the said documents which were produced before me for verification from the records maintained in my office, which I believe to be true correct, it revealed to me that no such order bearing No.DW/CIVIL/KAVI/GUNTHER/4752/2007 dated 07/02/2007, passed under Maharashtra Gunthewari Act, 2001 and the alleged plan bearing No.DW/CIVIL/KAVI/GUNTHER/4752/2007 dated 07/02/2007 does not find place in the records maintained in my office. I say that no such order dated 07/02/2007 was ever passed by any of the officer of the Corporation, specifically empowered under the said Act and does not find place in the records of the Corporation. Similarly no plan much less the plan shown to me was ever passed by any of the authorities dealing with the sanctioning of the plans of the Corporation, at any point of time. I say that these two documents does not find place in the record of the corporation and thus cannot be relied upon as a genuine documents for the purposes of claiming the structure in question as one which is already regularized. I say that these documents are not genuine and are bogus and therefore are not of any avail to the petitioner to claim any reliefs based on such documents. I say that the Petitioner has attempted to mislead this Hon'ble Court by placing bogus documents.”

(underline added)

8. Therefore, there is a categorical statement on oath that the order dated 7th February, 2007 and the plan dated 7th February, 2007 relied upon by the Petitioner have not been issued by the Municipal Corporation.

9. On 30th January, 2015, this Court noticed the change of Advocate on record. Therefore, this Court granted time to the Advocate for the Petitioner to take instructions from the Petitioner on affidavit dated 17th December, 2014. Today, the learned counsel appearing for the Petitioner has tendered an affidavit affirmed today of the Petitioner. We have perused the said affidavit. In paragraph 3 of the affidavit, he stated that he is not the author of the documents produced by him on 15th December, 2014 before the Executive Engineer of the Municipal Corporation. In paragraph 4, he has stated that he had availed services of the Architect by the name Venkatesh Construction. He stated that as per the demand of the Architect, he handed over necessary documents to the Architect and paid a sum of Rs.37,000/- to the Architect for the work. He is relying upon a copy of the application filed under the said Act for grant of regularisation. In paragraph 6, he has stated that the Architect handed over the certificate to him which was placed by him before the Executive Engineer. He states that the said Architect has shifted to Dubai. He has stated in the affidavit that the structure subject

matter of the notice is falling in the residential zone. He has stated that a permission under Section 44 of the Maharashtra Land Revenue Code, 1966 for converting the land on which the structure is situated for residential use has been granted by the Sub-Divisional Officer. In paragraph 13, he has stated that while converting the land into non-agricultural purposes, he had submitted the same Gunthewari certificate along with the sanctioned plan to the Sub-Divisional Officer. Thus, his affidavit indicates that the order dated 13th August, 2008 under Section 44 of the said Code has been passed after taking into consideration the regularisation certificate under the said Act and in fact, Condition No.5 of the said order indicates that the Sub-Divisional Officer acted upon the said order dated 7th February, 2007 as the Condition No.5 makes a reference to the map dated 7th February, 2007.

10. The learned counsel appearing for the Petitioner submitted that the Petitioner has played no role and the so called sanctioned plan and the regularisation order have been provided to the Petitioner by the Architect. He submits that it is not clear from the affidavit filed by the Municipal Corporation whether an application made by the Petitioner which is annexed at Exhibit 'B' to the affidavit tendered today is still pending. He submitted that the Petitioner may be permitted to apply for regularisation within a period of four weeks from today. He states

that the Petitioner has obtained housing loan and in fact, the original documents have been given in custody of the Punjab National Bank having a branch office at Magar Patta City, Pune. This statement is made on instructions across the bar.

11. The learned counsel appearing for the Municipal Corporation stated that the Municipal Corporation is even willing to produce the entire record before the Court for substantiating what is stated in the two affidavits of Shri Dangat.

12. The order dated 11th November, 2014 was passed in presence of the Counsel representing the Petitioner. The said order refers to written instructions dated 10th October, 2014 filed by the learned counsel appearing for the Municipal Corporation which clearly record that the Gunthewari certificate and the plan produced by the Petitioner were found to be fabricated in the sense that the same were not issued by the Municipal Corporation. The order dated 8th December, 2014 refers to the first affidavit of Shri Dangat which is dated 24th November, 2014 which reiterates that there was no order passed under the said Act by the Municipal Corporation in relation to the land/property subject matter of this Petition. This is specifically noted in paragraph 1 of the order dated 8th December, 2014. Thereafter, the

Petitioner was directed to produce the said documents before the said officer Shri Dangat. The affidavit was filed by Shri Dangat on 17th December, 2014 clearly records after the inspection of documents produced by the Petitioner that the certificate of regularisation and sanctioned plan were not genuine and the same were not issued by the Municipal Corporation. A copy of the said affidavit has been served to the Advocate on record for the Petitioner on 19th December, 2014. On 30th January, 2015, time was granted to the learned counsel appearing for the Petitioner to seek instructions from the Petitioner on the affidavit dated 17th December, 2014.

13. Thus, at least on 11th November, 2014, it is brought on record by the Municipal Corporation that both the documents relied upon by the Petitioner were fabricated. The said fact is recorded in the orders passed on 11th November, 2014 and 8th December, 2014. On 19th December, 2014, a copy of the affidavit of Shri Dangat dated 17th December, 2014 was served to the Advocate for the Petitioner. Now, for the first time, by filing an affidavit dated 16th February, 2015, the Petitioner is coming out with a case that he had entrusted the work of obtaining regularisation certificate under the said Act to an Architect and the said documents have been provided to him by the Architect. Considering what we have set out above, the said contention sought to

be raised today on 16th February, 2015 is completely an afterthought. From 11th November, 2014, repeatedly opportunities were made available to the Petitioner to come with some explanation. The explanation which comes today by way of an afterthought cannot be accepted at all. This is an attempt to shift the entire blame on an Architect who has allegedly shifted abroad.

14. It will be necessary to note here that even today we granted an opportunity to the Petitioner to withdraw the Petition. However, on instructions of the Petitioner, the learned counsel appearing for the Petitioner stated that the Petitioner is not desirous of withdrawing the Petition. We have rejected the explanation offered in the affidavit tendered today. It is obvious that the Petitioner relied upon the fabricated certificate under the said Act as well as a fabricated plan purportedly issued under the said Act. In fact, the Petitioner has relied upon the said certificate by annexing a copy thereof on page 37 of the Petition. Writ jurisdiction under Article 226 of the Constitution of India is always a discretionary and equitable remedy. Today, the Petitioner is not even claiming that the documents are genuine documents. Considering the conduct of the Petitioner which is reflected from the facts which are set out above, this Petition at the instance of the Petitioner cannot be entertained. Considering the conduct of the

Petitioner, even the request made across the bar to this Court for grant of permission to apply for regularisation cannot be acceded to.

15. The Pimpri Chinchwad Municipal Corporation will have to take the matter to its logical end. We direct the appropriate officer of the Pimpri Chinchwad Municipal Corporation to lodge a report with the concerned local police station. It is obvious that once such a report is lodged, the Police will take appropriate steps for seizure of the original documents which are handed over by the Petitioner to the Punjab National Bank. From the perusal of the order dated 13th October, 2008 passed by the Sub-Divisional Officer under Section 44 of the Maharashtra Land Revenue Code, 1966 it is crystal clear that the said order has been issued on the basis of the fabricated order dated 7th February, 2007. Hence, steps will have to be taken to revoke the said order.

16. Considering the conduct of the Petitioner, while dismissing the Petition, the Petitioner will have to be saddled with costs. The same is quantified at Rs.50,000/- which will be payable by the Petitioner to the Pimpri Chinchwad Municipal Corporation within a period of six weeks from today.

17. Accordingly, we pass the following order :-

ORDER

- (i) Writ Petition is rejected;
- (ii) We direct the Petitioner to pay costs quantified at Rs.50,000/- to the first Respondent within a period of six weeks from today;
- (iii) We direct the first Respondent to lodge a complaint with the appropriate local Police Station as regards the fabricated documents with a request to the Police to take steps for seizure of the documents which are lying in the custody of the Punjab National Bank;
- (iv) As the order dated 13th August, 2008 passed by the Sub-Divisional Officer, Pune Sub-Division, Pune under Section 44 of the Maharashtra Land Revenue Code, 1966 is based on the fabricated documents as indicated above, we direct the Sub-Divisional Officer to take immediate steps for recall and/or cancellation of the said order dated 13th August, 2008. A copy of this order shall be produced by the Respondents before the Sub-Divisional Officer, Pune Sub-Division, Pune who shall act upon an authenticated copy of this order.
- (v) We direct the Advocate for the Respondent to supply the

authenticated copy of this order to the Office of the Government Pleader, High Court, Appellate Side, Bombay. The office of the Government Pleader shall also forward a copy of this order to the Office of the Sub-Divisional Officer at Pune.

- (vi) At this stage, the learned counsel appearing for the Petitioner submits that necessary clarification be issued as the observations made in this Judgment and Order will come in the way of the Petitioner. The observations which are made in this Judgment and Order are based on the conduct of the Petitioner and, therefore, we are unable to accept the request for issuing any clarification. The learned counsel appearing for the Petitioner, at this stage, submits that the protection granted to the structure by way of ad-interim order be extended. Only by way of indulgence, we direct the Respondents not to demolish the structure subject matter of impugned notice for a period of six weeks from today subject to condition that the Petitioner will maintain status-quo as of today. We, however, clarify that notwithstanding the limited protection granted, the Municipal Corporation shall implement the other part of the order of setting

Criminal Law in motion as well as moving the Sub-Divisional Officer for cancellation of the order.

(A.K. MENON, J)

(A.S.OKA, J)