

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.774 OF 2015

Seema R. Shahapurkar. .. Petitioner
Vs
Municipal Corporation of Greater Mumbai
and Others. .. Respondents
—
Shri R.D. Soni i/by M/s. Ram & Co for the Petitioner.
Mrs. Shobha Ajitkumar for the Respondent Nos.1 and 2.
Shri Rajiv Mane, AGP for Respondent No.3 State.
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CORAM : A.S. OKA &
REVATI MOHITE DERE, JJ
DATED : 3RD JULY 2015

PC.:

1. Heard learned counsel appearing for the Petitioner and the learned counsel appearing for the First and Second Respondents. The learned AGP represents the Third Respondent.

2. The Petitioner has tendered an undertaking on oath affirmed on 3rd July 2011. The undertaking is taken on record and marked "X" for identification. We accept the said undertaking.

3. The challenge in this Petition under Article 226 of the Constitution of India is to the notice dated 11th October 2014 issued

under Sub-section (1) of Section 53 of the Maharashtra Regional and Town Planning Act, 1966 (for short “The MRTP Act”). From the statements made in Paragraph Nos.2 and 3 of the Undertaking, it is apparent that the Petitioner has accepted that the entire construction/structure subject matter of the impugned notice has been constructed without obtaining permission of the Competent Authority. Even the compound wall which is referred to in the Paragraph No.2 of the Undertaking has been constructed without obtaining permission of the Competent Authority and, therefore, the Petitioner wants to apply for regularization of even the compound wall.

4. Even according to the Sub-section (1) of Section 53 of the MRTP Act, the Petitioner is entitled as a matter of right to apply for regularization. As the Petitioner herself has offered to remove a substantial part of the offending structure, time deserves to be granted to the Petitioner to do so till 15th October 2015.

5. Hence, we dispose of the Petition by passing the following order:-

ORDER :

- (a) The Undertaking of the Petitioner marked “X” for identification is taken on record and the undertakings therein are accepted;

- (b) We grant time to the Petitioner to remove the entire offending structure mentioned in the impugned notice, save and except the compound wall (as seen in the photograph annexed as Exhibit-1 to the said Undertaking);
- (c) The Petitioner shall remove the entire portion of the objectionable structure, save and except the compound wall, on or before the 15th October 2015;
- (d) On failure of the Petitioner to remove the said objectionable portion on or before 15th October 2015, the Municipal Corporation shall immediately demolish the entire objectionable structure subject matter of the impugned notice including the compound wall without issuing further notice to the Petitioner;
- (e) It will be open for the Petitioner to make an Application for regularization of the compound wall as seen in the photograph annexed at Exhibit-1 to the Undertaking. Such an Application shall be made

within a period of four weeks from today;

- (f) If Application is not made within a period of four weeks from today, the same shall not be entertained;
- (g) We make it clear that if such an Application is made within a period of four weeks from today, the same shall be considered on merits only if the Petitioner complies with the undertaking by removing the objectionable structure as set out in Paragraph 2 of the said Undertaking on or before 15th October 2015;
- (h) On failure of the Petitioner to comply with the undertakings within the stipulated time, the Application made for regularization of the compound wall shall not be entertained;
- (i) If the Petitioner makes an Application for regularization of the compound wall within a period of four weeks from today and complies with the Paragraph 2 of the Undertaking, the Application shall be considered on merits within a period of two

months from 15th October 2015. In such event, till the communication of the order passed on the said Application is served to the Petitioner, the compound wall shall not be demolished by the Municipal Corporation. If the order be adverse to the Petitioner, the protection granted to the Petitioner shall continue to operate for a period of one month from the date on which the order is served to the Petitioner;

- (j) We make it clear that the Application for regularization of the compound wall shall be in the prescribed format and shall be made through a Licensed Architect;
- (k) After removal of the objectionable portion as per the undertakings, it will be open for the Petitioner to apply for grant of fresh permission to erect the structure which is demolished in terms of the Paragraph 2 of the Undertaking. If such Application is made, the Municipal Corporation shall expeditiously decide the same in accordance with law;

- (l) The Petition is disposed of on above terms;
- (m) All concerned to act upon an authenticated copy of this order.

(REVATI MOHITE DERE, J)

(A.S. OKA, J)