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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 2801 OF 2015

M/s. Sneha Builders

..Petitioner.

V/s.

Municipal Corporation of Greater Mumbai and Ors.

..Respondents

Mr.A.Y. Sakhare, Sr. counsel a/w. Mr. Shilpan Gaonkar and Mr. Suraj Iyer i/by M/s. Ganesh & Co. for the petitioner.

Mr. Vinod Mahadik for the respondent nos. 1 to 4 BMC.

Ms. I. Calcuttawala for respondent no. 5 State.

**CORAM : A.S.OKA AND
V.L.ACHLIYA, JJ.**

DATED : 29TH SEPTEMBER, 2015

P.C. :-

1. Heard learned senior counsel for the petitioner, the learned counsel for the first to fourth respondent and the learned A.G.P. for the fifth respondent.

2. Considering the limited nature of controversy involved in the petition, the same is forthwith taken up for final hearing. The learned counsel for the respondents waive service. The petitioner preferred an appeal under section 47 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act") with the State Government. The appeal was directed against the order made by the first the respondent Municipal corporation which is dated 28th April, 2015.

3. In the appeal preferred by the petitioner, an order of status quo was passed by the State Government for the purpose of the preventing the action of demolition on the basis of notice dated 18th March, 2011 under sub section (1) of section 53 of MRTP Act. By the impugned communication of June, 2015 which is at Exh. A to the petition, the order of status quo has been vacated by the State Government.

4. The first submission of the senior learned counsel for the petitioner is that the order of status quo has been vacated without giving an opportunity of being heard to the petitioner. Secondly, he urged that the order of status quo could not have been vacated only on the basis of the order dated 30th March, 2015 passed by this Court in Writ Petition No. 847 of 2013.

5. The learned counsel for the first to fourth respondents as well as learned A.G.P. supported the impugned order.

6. Learned counsel for the petitioners in connected writ petition No. 847 of 2013 urged that the first petitioner in the said writ petition is the owner of the property on which building which is the subject matter of notice dated 18th March, 2011 has been constructed and therefore, the first petitioner is a necessary and proper party to the pending appeal.

7. We have considered the submissions. It appears that in the light of notice under sub section (1) of section 53 of MRTP Act, the petitioner had made an application for regularization on 15th April, 2015. By an order dated 28th April, 2015, the first respondent Municipal Corporation rejected the said application against which aforesaid appeal has been preferred.

8. The order dated 30th March, 2015 passed by this Court in Writ Petition No. 847 of 2013 proceeds on the footing that though the suit was filed for challenging the notice dated 18th March, 2011, there is no ad interim or interim order granted in the said suit. When the said order was passed, the present petitioner had not applied for regularization. Therefore, only on the basis of the order dated 30th March, 2015 passed by this Court in Writ Petition No. 847 of 2013, ad interim order of status quo granted by the State Government could not have been vacated and that also without hearing the petitioner. Moreover, there are no reasons recorded by the State Government for vacating the order of status quo. Therefore, by restoring the order of status quo, a direction will have to be issued to the State Government to decide the appeal expeditiously.

9. The Learned counsel for the petitioners in W.P. No. 847 of

2013 pointed out that in the suit filed by the petitioner in this petition in the City Civil Court, on an application taken out by the first petitioner in W.P. No. 847 of 2013, the said petitioner has been impleaded as a party defendant. In any case, as the first petitioner in W.P. No. 847 of 2013 is claiming to be the owner of the property, the said petitioner becomes at least a proper party to the pending appeal. Accordingly, we dispose of the petition by passing the following order :

(i) The impugned communication of June, 2015 (Exh. A) to the petition is hereby set aside. The order of status quo passed earlier by the State Government is restored which shall continue to operate till the disposal of the appeal preferred by the petitioner under section 47 of MRTP Act;

(ii) We direct the petitioner to implead the first petitioner in W.P. No. 847 of 2013 (the Sion Kamgar Coop. Hsg. Soc. Ltd) as a party respondent to the pending appeal;

(iii) We direct the petitioner in this petition as well as said Sion Kamgar Coop. Hsg. Soc Ltd and first respondent Municipal Corporation to appear before the Appellate Authority on 12th October, 2015 at 3.00 p.m. for the purpose of fixing the date of hearing of the appeal.

(iv) The appellate authority shall decide the appeal as expeditiously as possible and in any event on or before 11th December, 2015;

(v) The order passed in the appeal be communicated to the parties to the appeal. If the said order be adverse to the present petitioner, the order of status quo shall continue to operate for the period of four weeks from the date on which the order is communicated to the present petitioner.

(vi) We make it clear that we have not made an adjudication on the merits of the pending appeal. All the contentions of the parties are kept open.

(vii) Rule is made partly absolute.

(viii) All concerned to act on authenticated copy of this order.

(V.L.ACHLIYA, J.)

(A.S.OKA. J.)

C E R T I F I C A T E

Certified to be true and correct copy of original signed
Judgment / Order.