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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 851 OF 2016

Shirur Shikshan Prasarak Mandal
Ghodnadi, District Pune
Through its Secretary
Shri Tulshiram Maniram Paredeshi

.. Petitioner

Vs.

Shirur Municipal Council, Ghodnadi,
Pune and anr.

.. Respondents

Mr. V. A. Shastry for petitioner.
Mr. Mandar Limaye for respondent no.1.
Mr. P. P. Kakade, AGP for State.

CORAM: NARESH H. PATIL &
G. S. KULKARNI, JJ.

FEBRUARY 03, 2016.

P.C.

1. The petitioner has questioned the notice dated 6/1/2016, annexed at Exh. A-15. Admittedly, Regular Civil Suit No. 53 of 2015 was filed by the petitioner against the respondent no.1 in the Civil Court for relief of injunction in respect of the same subject structure. Initially ad-interim injunction was granted, according to the learned counsel for the

petitioner, but, thereafter, the application at Exh. 5 filed in the said Suit came to be rejected. The petitioner preferred an appeal against the said order. It is submitted by the learned counsel for the petitioner that said appeal was dismissed by the District Court in the month of December, 2015. According to the learned counsel, the petitioner has not preferred any proceeding against the order of District Court.

2. Learned counsel appearing for respondent no.1 - Shirur Municipal Council submits that the matter has been referred to Director, Town Planning, Pune Region, Pune for his opinion. Reminders have also been issued to the said authority. So far Shirur Municipal Council has not received any communication from the Director, Town Planning, Pune Region, Pune.

3. The petitioner seeks interim protection till the decision is taken by the respondent no.1 - Municipal Council on the proposal submitted for regularization of the subject structure. Section 53 of the M.R.T.P. Act, 1966 refers to power to require removal of unauthorized development. Section 53 (3) of M.R.T.P. Act, 1966 reads as under :-

53. Power to require removal of unauthorized development

(1)

(2)

(3) Any person aggrieved by such notice may, within the period specified in the notice and in the manner prescribed, apply for permission under section 44 for retention on the land of any building or works or for the continuance of any use of the land, to which the notice relates, and pending the final determination or withdrawal of the application, the mere notice itself shall not affect the retention of buildings or works or the continuance of such use.

4. There is an inbuilt protection granted to the person who applies for permission under Section 44 of the Act of 1966. In view of the clear position in law, no further interference is warranted.

5. We direct that respondent no.2 shall forward its opinion to the respondent no.1 - Shirur Municipal Council within four weeks from today and respondent no.1 - Shirur Municipal Council shall take appropriate decision within four weeks thereafter in respect of the proposal submitted by the petitioner for retention of the offending building. Learned counsel for the petitioner undertakes to withdraw the Regular Civil Suit No. 53 of 2015.

6. It is clarified that we have not expressed any opinion on the merits of the matter.

7. With the aforesaid directions, petition stands disposed of.

(G. S. KULKARNI, J.)

(NARESH H. PATIL, J.)