

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1226 OF 2016

Vasudeo Bhau Patil .. Petitioner
Vs
The Managing Director and Others. .. Respondents

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Shri Rahul Thakur for the Petitioner.
Shri B.B. Sharma for the Respondent Nos.1 to 4.
Shri V.B. Thadhani, AGP for the Respondent Nos.5 to 9.
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CORAM : A.S. OKA & C.V. BHADANG, JJ
DATED : 23RD FEBRUARY 2016

PC.

1. Heard learned counsel appearing for the Petitioner and the learned counsel appearing for the first to fourth Respondents. The learned AGP represents the fifth to ninth Respondents.

2. By this Petition under Article 226 of the Constitution of India, the Petitioner is challenging the notice dated 22nd January 2015 issued by the City and Industrial Development Corporation Limited (For short “CIDCO”) to the Petitioner under Sub-section (1) of Section 54 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”). The allegation in the notice is that the Petitioner has proceeded to carry on illegal construction of RCC building having an area of 211.50 sq. metres. On receipt of the said notice, on 5th February 2015, the Petitioner made an Application to the

third Respondent which is an Authority of the CIDCO for regularization of the construction in terms of the policy of the year 2007. By a communication dated 18th May 2015, the Petitioner was informed that his case for regularization cannot be considered.

3. The learned counsel appearing for the Petitioner invited our attention to the assessment extract issued in the name of the Navi Mumbai Municipal Corporation. He pointed out that the said extract shows that even as of 1st October 2003, the area of the residential structure of the Petitioner was 82.50 sq. metres. His submission is that the structure to the extent of the said area will have to be regularized. Today he has tendered an undertaking of the Petitioner on oath which is taken on record and marked "X-1" for identification. In paragraphs 2 and 3 of the said undertaking, the Petitioner has stated thus:

"2. I have reconstructed my house to an area on 211.5 Sq. Mtr instead of 82 Sq. Mte. I give this solemn undertaking to this hon.court that I shall myself demolish and remove an area of 129 Sq.Mtr (the additional area) within a time period of 3 months from (i.e. 90 days) I further undertake to assess structural stability of the said house on my own and that I shall not hold CIDCO/NMMC or any other body responsible for any damage caused due to such demolition. I state that the area of my house shall not exceed 82.50 Sq. Mtr.

3. I undertake to comply with this undertaking which is given unconditionally to this hon.court today on 18th of February 2016."

4. The learned counsel appearing for the Petitioner submits that by accepting the undertaking, permission may be granted to the Petitioner to apply afresh for regularization of the structure admeasuring 82.50 sq. metres. The learned counsel appearing for the first to fourth Respondents submitted that firstly there is nothing on record to show that the original structure of 82 sq. metres was constructed without obtaining the Development Permission from the Competent Authority. Secondly, he has stated that in any case, even the said original structure has been demolished and a new structure has been illegally erected by the Petitioner.

5. The assessment extract of the Navi Mumbai Municipal Corporation of 29th April 2015 prima facie shows that the Petitioner was having a residential structure admeasuring 82 sq. metres at least on 1st October 2005. By giving undertaking, the Petitioner has agreed to reduce the area of his structure to 82.50 sq. metres within a period of three months from today. If the Petitioner complies with Clause (2) of his undertaking, a permission can be granted to the Petitioner to apply for regularization of the structure admeasuring 82.50 sq. metres.

6. Accordingly, we dispose of the Petition by passing the following order.

ORDER :

- (a) The undertaking dated 18th February 2016 of the Petitioner (marked “X-1” for identification) is accepted;
- (b) If the Petitioner fails to reduce an area of the existing structure to an area of 82.50 sq. metres within a period of three months from today, it will be open for the first to fourth Respondents to demolish the entire structure without further notice to the Petitioner;
- (c) If the Petitioner complies with the said undertaking within the time provided therein, he shall inform the third Respondent about the compliance made with the undertaking by addressing a letter along with photographs of the structure. On receipt of the said letter, it will be open for the third Respondent to inspect the structure and to verify whether compliance has been made with the undertaking;

- (d) If the Petitioner complies with the Paragraph 2 of the undertaking by reducing the area of his structure to the extent of 82.50 sq. metres, it will be open for the Petitioner to make an Application for regularization of the structure having an area of 82.50 sq. metres.
- (e) Such an Application shall be made within a period of one month from the date on which the area of the structure is reduced to the size of 82.50 sq. metres;
- (f) If such Application is made, the City and Industrial Development Corporation of Maharashtra Limited shall decide the same in accordance with law within a period of 60 days from the date of receipt of such Application;
- (g) The said Application will be decided on merits without being influenced by the communication dated 18th May 2015 (Exhibit-E to the Petition);
- (h) Needless to add that if the Application for regularization is rejected, it will be open for the first

to fourth Respondents to take action of demolition in respect of the structure admeasuring 82.50 sq. metres as well;

- (i) All contentions on the Application for regularization on merits are kept open;
- (j) The Writ Petition is disposed of on above terms.

(C.V. BHADANG, J)

(A.S. OKA, J)