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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
WRIT PETITION NO.1497 OF 2016

Pramod Sainath Mhatre ...Petitioner
vs.
The Managing Director
CIDCO & Ors. ...Respondents

Ms Samina Mirza i/b Mr.Rahul Thakur for the
Petitioner
Mr.B.B.Sharma for the respondent Nos.1 to 4.

CORAM : A.S.OKA, &
R.D.DHANUKA, JJ.
DATE : MARCH 4, 2016

P.C.:

1 Heard the learned counsel for the petitioner. The challenge in this petition under Article 226 of the Constitution of India is to the notice dated 7th December 2015 issued by the City and Industrial Development Corporation of Maharashtra Limited (for short 'CIDCO') under sub section (1) of section 54 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'MRTP Act').

2 The impugned notice records that RCC construction of ground plus three floors admeasuring 122.745 sq meters is being constructed by the petitioner. In response to the said notice, the petitioner addressed a letter dated 4th January 2016 to the Chief Controller of Unauthorised Constructions of the CIDCO in which it is stated

that the construction was earlier made by the petitioner in the year 2001. It is further stated therein that as the said structure was in a dilapidated condition, the petitioner had demolished the same and that he has carried out the construction of a new house.

3 A prayer was made to regularise the said construction in terms of the Government policy. Reliance is placed by the petitioner on the property tax bill issued by the Navi Mumbai Municipal Corporation. There is a reply filed by Shri Pritamsingh Rajput, the Chief Controller of Unauthorised Construction of CIDCO. It is pointed out that on the basis of the site inspection conducted on 21st October 2015, the impugned notice was issued. At that time, photographs of the structure were taken. A copy thereof has been annexed to the affidavit. The record of assessment is also annexed which shows that as on 1st April 2001, there was a residential structure admeasuring 39.06 sq meters. Now, there is a building consisting of RCC ground plus three floors having area of 122.745 sq meters. The photograph annexed to the affidavit shows that the RCC work of ground plus two floors is completed and RCC Construction of third floor is in progress. The photograph is taken on 21st October 2015. As far as policy of regularization is concerned, affidavit clarifies that the cut off date is 1st May 2007 and the proposal submitted by the CIDCO to extend the cut off date till 2012 is under consideration of the

State Government.

4 The submission of the learned counsel for the petitioner is that the construction carried out by the petitioner will be protected under the policy as the structure was in existence prior to 1st May 2007. Her submission is that in any event, the present structure can be brought down to its original area of 39.6 sq meters.

5 We have considered the submissions. In reply to the impugned notice, the petitioner addressed a letter to the Chief Controller of the Unauthorised Constructions in which it is claimed that the original structure is of 2001. Assessment record produced by the CIDCO confirms the same. The assessment record shows that there was a construction of ACC sheets admeasuring 39.7 sq meters as on 1st April 2001. The letter dated 4th January 2016 addressed by the petitioner records that after the demolition of the house constructed in the year 2001, he started construction of a new house. Along with additional affidavit, photographs have been produced by the petitioner. The said photographs are consistent with the photograph relied upon by the CIDCO.

6 Even assuming that the cut off date of the policy of regularization is extended till 31st December 2012, still the structure of the petitioner will not be protected. Going by the letter dated 4th January 2016, the construction has been recently

started. The original structure which was in existence in the year 2001 is not in existence now, and therefore, there is no question of protecting the same.

7 The sum and substance of the above discussion is that there was a single storeyed small house having area of 39.6 sq meters. The petitioner without obtaining permission of the Planning Authority demolished the same and has recently started construction of a RCC building having ground plus three floors. Admittedly, the construction is unauthorised and it cannot be protected by the existing policy as well as the policy under consideration of the State Government. At this stage, we must also note that in paragraph 12 of the affidavit of Shri Rajput, he has stated the land below the structure has already been acquired by the State Government for setting up the city of Navi Mumbai. Hence, there is no merit in the petition and the same is rejected.

(R.D.DHANUKA,J.)

(A.S.OKA,J.)