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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
WRIT PETITION ST.NO.3466 OF 2016

Baburao Kashiram Bhaltadak
since deceased through L.Rs.
Lazrus Baburao Bhaltadak & Ors. ...Petitioners
vs.
The Additional Director, Town
Planning (A.D.T.P.) Nashik
Municipal Corporation & Ors. ...Respondents

Mr.R.M.Haridas i/b Mr.Tushar Sonawane for the
Petitioners in W.P.St.No.3466/2016
Ms Chaitrali Deshmukh for the respondent Nos.1 to 3
in W.P.St.No.3466/2016
Ms M.P.Thakur, AGP for respondent Nos.8 and 9 in
W.P.ST.No.3466/2016

CORAM : A.S.OKA, &
C.V.BHADANG, JJ.
DATE : FEBRUARY 18, 2016

P.C.:

1 The learned counsel for the petitioners states that out of 65 petitioners, 61 petitioners have filed affidavits stating that the structures subject matter of this petition which are in their possession have been constructed without obtaining permission of the Competent Authority. He states that the petitioners intend to apply for regularization and they also intend to apply for declaring the land on which they have constructed structures subject matter of this petition as slum within the meaning of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (for short 'the said Act of 1971'). He states

that the applications for regularization will be made by the petitioners within a period of one month from today.

2 The first challenge in this petition is to the final orders passed by the Nashik Municipal Corporation by invoking provisions of 260, 261, 264, 267 and 478 of the Maharashtra Municipal Corporations Act, 1949 directing the demolition of the structures in possession of the petitioners. The second prayer in this petition is for implementation of slum rehabilitation scheme and to rehabilitate the petitioners in accordance with the provisions of the said Act of 1971. Reliance is placed on the Resolution No.141 dated 20th May 1997 passed by the General Body of the Nashik Municipal Corporation.

3 The learned counsel for the Nashik Municipal Corporation has placed on record a letter dated 17th February 2016 addressed by the Zonal Officer (Western) of the Nashik Municipal Corporation to the Executive Engineer of the Town Planning Department of the said Corporation. It records that by a General Body Resolution No.141 dated 20th May 1997, it was resolved to grant approval for declaring the property bearing CTS Nos.6875, 6883, 6886 and 6887 (final plot No.359) at Sharanpur Gaothan as a slum. The letter records that no further steps have been taken on the basis of the said Resolution.

4 The impugned orders/notices dated 20th January

2016 record that the structures in possession of the respective petitioners have been constructed unauthorizedly. It is accepted by all the petitioners as recorded in the order dated 4th February 2016 as well as subsequent affidavits that the structures which are subject matter of the impugned orders have been constructed without obtaining permission of the Competent Authority. The very fact that the petitioners desire to apply for regularization shows that they have accepted that the structures in their possession have been constructed unauthorizedly.

5 Considering the peculiar facts of the case, a limited protection deserves to be granted to the petitioners to enable them to apply for regularization. We make it clear that the petitioners cannot be protected on the first ground that they want to apply for declaring the land on which they have constructed structures as a slum under the said Act of 1971.

6 To enable the petitioners to avail of the limited protection, they will have to file specific undertakings stating that they will not make any addition or alteration and they will not create any third party rights in respect of the structures and they will not part with possession thereof.

7 Hence, we dispose of the petition by passing the following order:

- (I) It will be open for the petitioners to make separate applications for regularization of the structures subject matter of the notices/orders dated 20th January 2016 to the Nashik Municipal Corporation within a period of one month from today. The applications shall be made in a prescribed format through a licensed Architect;
- (II) The applications for regularization made by the petitioners shall be decided as expeditiously as possible and preferably within a period of sixty days from the date of the applications;
- (III) Till the disposal of the applications for regularization and till the date of communication of the order passed on the applications to the petitioners or to their respective Architects whichever is earlier, the action of demolition shall not be taken by the Nashik Municipal Corporation on the basis of the notices/orders dated 20th January 2016 subject to condition of the petitioners filing separate or joint affidavits accepting that the structures subject matter of this petition have been constructed without obtaining permission from the Competent Authority;
- (IV) The affidavit/affidavits shall also contain an undertaking that the petitioners shall not carry out any addition or alteration to the structures in question shall not create any third party rights and shall not part with possession thereof;
- (V) If such affidavits are not filed within a

period of one month from today, the limited protection granted to the petitioners shall stand vacated without further reference to the Court. In such event, the Nashik Municipal Corporation shall take action of demolition of the structures subject matter of this petition;

(VI) On the failure of the petitioners to make applications for regularization within a period of one month from today, it will be open for the Nashik Municipal Corporation to take action of demolition on expiry of period of one month from today;

(VII) If the orders passed on the applications for regularization be adverse to the petitioners, the limited protection granted as above shall continue for a period of six weeks from the date on which the orders are communicated to the petitioners or their respective Architects, whichever is earlier;

(VIII) It will be open for the petitioners to apply to the State Government for a declaration of the land in question as a slum under the said Act of 1971. If such application is made, the same shall be disposed of as expeditiously as possible and preferably within a period of sixty days from the date of application;

(IX) We make it clear that the petitioners will not be entitled to protection of their structures on the ground that the applications made by them for declaring the land in question as a slum is pending with the State Government;

(X) We make it clear that we have made no

adjudication on the issue whether the land in question can be declared as a slum under the said Act of 1971;

(XI) All contentions on the applications for regularization proposed to be made by the petitioners are kept open;

(XII) Writ Petition is disposed of.

(C.V.BHADANG,J.)

(A.S.OKA,J.)