

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3106 OF 2016

M/s. Vardhaman Construction.

..Petitioner.

Versus

State of Maharashtra & Others.

..Respondents.

Mr. R. S. Apte, Senior Advocate with Mr. Mandar Limaye and Mr. K. S. Patil for the Petitioner.

Mr. P. G. Sawant, learned AGP for the State.

Ms. Swati Sagvekar for Respondent Nos. 2 and 3.

Coram : Ranjit More &

Dr.(Smt) S. S. Phansalkar-Joshi, JJ.

Date : **March 11, 2016.**

P. C. :

1. Heard learned Counsel appearing for the respective parties.

2. Mr. Apte, the learned Senior Counsel appearing for the Petitioner submitted that though the application made by the Petitioner under section 53(3) of the Maharashtra Regional and Town Planning Act, 1966 is rejected, an appeal has been filed by the Petitioner on 25th February 2016 before the State Government as contemplated under section 47 of the MRTP Act. The short grievance raised in this writ petition is that in the said appeal, the Petitioner has filed an application for stay, till date no orders are passed on the said application.

. Mr. Apte submitted that the Petitioner apprehend that in the absence of any protection to the Petitioner in the said

appeal despite having diligently adopted the statutory remedies, the construction in question would be demolished by Respondent Nos.2 and 3 in pursuance of the earlier notice given under section 53 of the MRTTP Act, rendering the Petitioner's appeal infructuous.

3. Mr. Sawant, learned AGP submitted that the Government has issued detailed and comprehensive guidelines in order to expeditiously dispose of the appeals against the orders refusing regularisation. He placed on record GR dated 2nd March 2016. He submitted that in terms of Clause-(10) of this GR, such appeals would be decided within the period of six months from the date of filing of such appeals. He made a statement, after taking instructions from the concerned officer, that the Petitioner's appeal [copy of which is at Exhibit-E to the petition] arising out of the rejection of Petitioner's application for regularisation of subject structure would be decided within six months of its filing. Statement is accepted.

4. The learned Counsel appearing for the Respondent Nos.2 and 3 submitted that Respondent Nos.2 and 3 will extend necessary co-operation for speedy disposal of the Petitioner's appeal and they will not seek unnecessary adjournment. Statement is accepted.

5. We find that there is some force in the

apprehension of Mr. Apte. As of today, having adopted the legal recourse of appeal and taking out stay application therein, no orders are made on such stay application by the appellate authority. In that view of the matter, it would be just and proper to protect the Petitioner in the interregnum till the appeal is decided on merits. We, therefore, dispose of the writ petition in following terms :

- [1] Respondent No.1 shall decide the Petitioner's appeal as expeditiously as possible and at any rate within the period of six months from the date on which it was filed.
- [2] During the pendency and till the disposal of Petitioner's appeal preferred under section 47 of MRTP Act, Respondent Nos.2 and 3 shall not demolish the suit building standing on land bearing S. No. 355, 356A, 356B and 358A, Village Gass, Nalsopara, Tal. Vasai, Dist. Palghar.
- [3] Needless to state that if the decision on appeal be adverse to the Petitioner, the Petitioner may adopt necessary legal proceedings, as may be permissible in law. In order to enable the Petitioner to take recourse to further legal proceedings, the protection granted to the Petitioner in Clause [2] above shall remain in force

till the expiry of the period of one week from the date of communication of such decision to the Petitioner. After the expiry of one week's period, the Petitioner shall demolish the structure in question on his own subject to any protection that may be granted by any competent authority/court.

- [4] It is made clear that this Court has not gone into merits of the matter and all points and contentions of the respective parties are kept open.

[Dr. (Smt.) S. S. Phansalkar-Joshi, J.]

[RANJIT MORE, J.]