

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8075 OF 2016

M/s. Gada Properties Pvt. Ltd.

... Petitioner

vs.

The Municipal Corporation of Gr. Bombay
and ors.

... Respondents

Mr. Satyam N. Vaishnav, Advocate for the petitioner.

Mr. Vinod Mahadik, Advocate for respondent no.1/BMC.

Mrs. Vaishali Nimbalkar, Government Pleader for respondent No.3/State.

Coram : Smt. R. P. SondurBaldota, J.

Date : 8th August, 2016.

P.C. :

1. By this petition filed under Article 227 of Constitution of India the petitioner seeks three reliefs. The first relief is for writ of certiorari for quashing the orders dated 17th July, 2015 and 15th September, 2015 passed by respondent no.2 the Designated Officer on the proposals for regularization of unauthorized construction and the order dated 15th June, 2016 passed by respondent no.3, the Hon'ble Minister of State (Urban Development) dismissing the appeal against the order of respondent no.2. The second relief is for a direction to the respondents to regularize the petitioner's structures situate at CTS No. 502/8, 502/9 and 502/10 consisting of "ground, first, second and part three floors" as shown in the city

survey records. The third relief is for permanent injunction to restrain the respondents from taking any steps pursuant to the orders under challenge.

2. The factual background of the petition is as follows :

There are three independent buildings standing on CTS No. 502/8, 502/9 and 502/10 being buildings no. 221/E, 221/C and 221/D respectively, which were earlier owned by different persons. The building no. 221/C, situate on CTS No. 502/9 was owned by one V. K. Gala. He sold the building and land by registered deed of conveyance dated 28th March, 1988 to Mr. Bhanji Devraj Gada, who in turn sold the property to the petitioner company by registered deed of conveyance dated 21st September, 1996. Building no. 221/D situate on CTS No. 502/10 was owned by N. J. Multani and others. They sold the same to Jayant Arjun Gala by registered sale deed dated 24th March, 1988. Subsequently by the registered deed of conveyance executed in September, 1996 Jayant Gala sold the property to the petitioner. The deed of conveyance between the original owner, N. J. Multani and others and Jayant Gala contains a recital disclosing specifically that a notice had been issued by respondent no.1 Corporation for demolition of the second floor of the building alleging that the same was unauthorized construction. The original owner had filed S. C. Suit No. 646 of 1987 against respondent no.1 in Bombay City Civil Court at Bombay and the suit at the relevant time was pending. Building no. 221/E situate on CTS No. 502/8 was earlier owned by one K. H. Kothari, who by registered sale deed dated 16th February, 1996 sold it to the petitioner.

3. The notice referred to in the registered sale deed dated 24th February, 1988 was issued under Section 351 of the Bombay Municipal Corporation Act. It alleged unauthorized RCC construction of first and second floor on building no. 221/D. Next the petitioner was served with notice dated 10th November, 2005 under Section 354(A) of Mumbai Municipal Corporation Act ('the MMC Act', for short) calling upon the petitioner to stop the work "of wooden partition walls on the second and third floor". The petitioner sent its reply dated 16th December, 2005 and thereafter filed LC Suit No. 280 of 2006 in the Bombay City Civil court to challenge the notice. By the ad-interim order passed therein the court appointed Commissioner to visit the site and make report. The parties were directed to maintain status quo till then. The Commissioner submitted his report and thereafter the Bombay City Civil Court by its order dated 25/1/2006 continued the Status Quo for a period of one months and granted liberty to the respondent to issue notice to the petitioner under Section 351 of the MMC Act. Thereafter the petitioner was served with notice dated 29th March, 2006 issued under Section 351 of the MMC Act for unauthorized construction of "first floor, second floor and part third floor with M. S. Girder Framework, RCC slabs, brick masonry side walls, RCC staircase adm. 78' X 31' X 6" (1st floor), second floor adm. 78' X 31.6", 13.7" X 7'10" & 7' X 6', third floor adm. 40'1" X 21'5", 16' X 31'6", 13'7" X 7'10" and 7' X 6' (as per CTS record attached herewith the structure bearing CTS No. 502/8, 502/9 & 502/10". The petitioner replied the notice by its letter dated 3rd April, 2006. The Assistant Municipal Commissioner considered the reply, the document relied upon by the petitioner

and by his order dated 29th June, 2006 rejected the reply and called upon the petitioner to remove the unauthorised construction. The petitioner thereupon filed SC Suit No. 3063 of 2006 in the Bombay City Civil Court to challenge the order.

4. The petitioner had earlier filed applications for regularization of the constructions mentioned in the notices issued to it. By the order dated 10th July, 2006 the Bombay City Civil Court permitted the petitioner to submit fresh proposal for regularization with an observation that the earlier proposal stands cancelled. The respondent no.1 by it's letter dated 14th October, 2006 rejected the fresh proposal. The petitioner then filed review application before the Municipal Commissioner, who directed the Deputy Municipal Commissioner Zone-IV and Executive Engineer (B & P) to rehear the same. The Deputy Municipal Commissioner by his order dated 17th July, 2015 rejected the proposal for regularization and called upon the petitioner to remove the first and second floor of the building. Being aggrieved by the order, the petitioner approached, by way of appeal under Section 47 of the Maharashtra Regional Town Planning Act, the Principal Secretary of the Government, Urban Department, Mantralaya, Mumbai. The appeal came to be dismissed on 15th June, 2016. Thus, the proposal given by the petitioners for regularization of unauthorized construction carried out by them has been dismissed by the competent authorities.

5. Mr. Vaishnav, the learned advocate for the petitioner submits that rejection of the proposals of the petitioner by the

authorities is without proper application of mind to the facts of the case and without proper reading of the concerned documents. Mr. Mahadik, the learned advocate for respondent no.1/Corporation submits that the very fact that the petitioner filed applications for regularization of the structures in dispute means that it admits that the structures are unauthorized and regularization of unauthorized structure is entirely at the discretion of the respondent. The process of regularization or the decision on the proposal for regularization would be the decision of the experts in the field and cannot be subject to judicial scrutiny.

6. As seen from the order of the Minister on the appeal under Section 47 of the MRTP Act, the petitioner had, in support of the claim for regularisation contended that it is the owner of the property situated at CTS No. 502/8 to 10, S.V.Road, Andheri – West. The said property consisting of ground + 2 floors + 3rd floor (partly) has been in existence since prior to 1960. It is noted in the Register of Land Records and the petitioner has been paying taxes in respect of the same. In the year 1988 respondent no.1 had issued notice dated 20th January, 1988 under Section 351 of the BMC Act to the previous owner with regard to construction of first and second floor. The hearing on that notice took place before the Assistant Commissioner who agreed to regularise the construction on compliance of certain conditions communicated to the petitioner by the letter dated 20th February, 1991. The predecessor of the petitioner complied with the direction contained in that letter. The petitioner claimed that after purchase of the property it submitted the proposal dated 24th July, 2003 for repairs and

reconstruction of the property. Then in the year 2006 pursuant to the liberty granted by the Bombay City Civil Court, it filed fresh proposal for regularization.

7. As against the above the respondent had pointed out in the appeal before the Minister that the first proposal for regularization, filed by the petitioner through Architect Mr. Anil Kshirsagar on 24th July, 2003, had to be disposed off because the petitioner failed to produce the necessary documents despite being called upon by the letter dated 1st October, 2003. The disposal of the proposal was communicated to the petitioner by the letter dated 4th February, 2004. Then another Architect Mr. Pradip Solanki filed his supervision memo dated 28th May, 2004. The petitioner was informed that in view of disposal of the application for regularisation, it was not possible to consider the supervision memo and that the petitioner was required to file a fresh proposal. Three years thereafter i.e. on 17th October, 2007 Architect M/s. Redkar and Redkar filed the fresh proposal. Once again by the letter dated 31st July, 2007 the petitioner was called upon to produce the necessary documents. When the petitioner failed to comply with the requisition in the letter, for eight long years, it's proposal was disposed off.

8. Mr. Vaishnava submits that the respondent failed to take into account the document of the letter dated 20th February, 1991 from the Ward Officer, 'K' West Ward addressed to one Shri. "Jayantilal Arjun Shah" calling upon him to (i) pay charges of Rs.3,000/- for tolerating the unauthorized repairs, (ii)

submit an indemnity bond on the stamp-paper of Rs.52.50 ps. indemnifying the respondent against any litigations that may arise in future and (iii) pay assessment charges upto date. The letter informed Mr. Shah that on compliance of the above, the action initiated under Section 351 of the BMC Act (Now MMC Act) will be withdrawn. He then refers to the receipt dated 15th March, 1991 issued to “Jayantilal A Gala” for payment of Rs.3,000/- for removal of debris in satisfaction of the first condition. The reference noted on that receipt is MDC/1411 dated 1st February, 1991. The next document relied upon is of the receipt dated 12th April, 1991 issued to Jayantilal Arjun for payment of Rs.40,631/- made towards “difference of property taxes from 1962 to 1986 by way of compliance of the third condition”. These three documents according to Mr. Vaishnava establish that respondent no.1 had infact regularised the structure on the 1st and 2nd floor, way back in the year 1991. These documents along with the Municipal Assessment Record have been produced before this Court also.

9. Perusal of the first document i.e. the letter dated 20th February, 1991 relied upon by the petitioner shows that the subject noted thereon is “unauthorized construction of R.C.C. Ist and IInd floor adm. 70’ x 10’ with B. M. Walls on the existing R.C.C. ground floor structure at 221, S. V. Road, Andheri (W)”. It is not even the case of the petitioner that it owns a single structure bearing no. “221” at S. V. Road, Andheri. Admittedly it had purchased three different structures bearing numbers 221/E, 221/C and 221/D at different points of time from different owners. Besides the letter does not refer to the details of the notice

under Section 351 of the BMC Act which was to be withdrawn on compliance of the requisition contained in the letter. Next the letter starts with words "By direction". The authority at whose directions the compliance was sought is not known. It is not the case of the petitioner that there was any order of regularisation passed by the respondent no.1. Mr. Mahadik submits that whenever unauthorised construction is regularised, the charges recovered therefor are the specific charges for that purpose. The charges are never in the form of payment for debris removal. He submits that such payment is demanded by respondent no.1 only when unauthorized structures are demolished and the debris is required to be removed. The next document referred to by Mr. Vaishnava is the receipt dated 12th April, 1991 issued to Jayantilal Arjun for payment of Rs.40,631/- made towards "difference of property taxes from 1962 to 1986". This receipt is again not explained. As regards the third requisition of submission of Indemnity Bond the petitioner is silent. It has neither relied upon nor produced any document of indemnity.

10. The next document allegedly ignored by the authority is of copy of City Survey Map for City Survey No.502/8 to 10. It was issued on 18th July, 2004. There is noting of number 'III' for C.S.No.502/8, 502/9 and 502/10. Mr. Vaishnava submits that this number indicates existence of three floors on the building. This according to him indicates that the structures are authorised. This document had been considered by the Assistant Municipal Commisisoner while considering the petitioner's reply to the notice under Section 351 of the MMC Act. The observations of the

Assistant Municipal Commissioner as stated in his order are

“Zerex copy submitted by you of City Survey Plan issued by City Survey Office dt.19.7.05 in the application of Mr. Sachin Pawar for CTS No.502/8 to 10 has shown that the structure is consisting of 3rd floor. However, as per the remarks obtained by City Survey Office under no. City Survey/Andheri/City Survey No./502/8 to 10/06 dt. 30.1.06, it is clearly mentioned that the structure is mentioned as ground floor structure only in their original sheet, hence copy submitted by you can not be considered & existence of noticed structure is not shown in the original sheet.”

The Municipal Assessment Record relied upon by the petitioner before this Court has also been considered the Assistant Municipal Commissioner. In his order on the show cause notice under Section 351 of MMC Act. He observes as under :

“Zerex copy of Assessment bill bearing no. 1) KW-2-0205-00-7, 2) KW-20-0204-00-1, 3) KW-20-0206-00-3, it is stated that the assessment is merely accepted for tax purpose and can not be considered for the authenticity of the structure.”

11. The documents relied upon by the petitioner for the purpose of regularisation of the unauthorised construction are the very documents that had been relied upon by it to establish the authorisation of the structure. One fails to understand as to how the same documents can be used for both the purposes i.e. for regularisation of the unauthorised construction and to establish authorisation of the construction. It is further strange that despite having in possession the evidence of authorisation of the structure, the petitioner chose to withdraw the suit and apply for regularisation of the structure. It has been rightly submitted by

Mr. Mahadik that an application for regularisation presupposes the unauthorised nature of the structure. Therefore it is not open for the petitioner to contend, in the application for regularisation, that the structure in question is an authorized structure. It is obvious that the consideration that would weigh with respondent no.1 as the authority for regulating the construction and development in the city of Bombay would be different considerations. Those considerations would include availability of FSI on the land, strength of the building constructed originally over which additional construction has been put up, the nature of the construction carried out, and observance of the other rules of development qua the surrounding structures. The petitioner in the present petition has not touched upon any of these aspects. It is not known whether the proposal for regularisation submitted by the Architect of the petitioner had taken care of these aspects of the matter. The petitioner has not produced copy of the proposals for regularisation before the Court. Another relevant fact, which cannot be lost sight of it that the notice issued by the respondent under Section 351 of the Mumbai Municipal Corporation Act was preceded by the notice under Section 354(A) of the MMC Act by which it was called upon to stop the work of construction, noticed as being carried out on the relevant time.

12. In all the above circumstances, it is abundantly clear that the petitioner has been, since the date of service of notices upon him, resorting to either the Court proceedings or the proceedings for regularisation in order to delay the action on the part of respondent no.1 of removal of unauthorised construction.

In any case, Judicial scrutiny of such decisions of the authority regulating development would be limited only to the extent of ensuring that the principles of natural justice are followed. The petitioner herein can have and infact has no complaint on that count. The respondent had infact patiently waited for eight long years for the petitioner to produce the necessary documents. Hence, the petitioner is dismissed with costs.

[Smt. R. P. SondurBaldota, J.]