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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10971 OF 2015**

Shri. Kaluram Maruti Keni	... Petitioner
Versus	
City and Industrial Development Corporation of Maharashtra Ltd and Ors.	... Respondents

Mr. Rajesh S. Patil for the Petitioner.
Mr. Ashutosh M. Kulkarni for the Respondent Nos.1 to 3.

**CORAM : A.S. OKA &
C.V. BHADANG, JJ.**

DATE : 1st FEBRUARY, 2016

P.C.

1 Heard the learned counsel appearing for the Petitioner. The challenge in this Petition under Article 226 of the Constitution of India is to the notice dated 12th June, 2015 issued by the City and Industrial Development Corporation of Maharashtra Limited (for short "CIDCO"). The said notice records that the Petitioner has commenced a new RCC construction admeasuring 483.96 square meters without obtaining permission of the Competent Authority which in the present case is the CIDCO. The submission of the learned counsel appearing for the Petitioner is that considering the area of the plot held by the Petitioner construction to the extent of 483.96 square meters will be permissible.

He pointed out that on 3rd November, 2015 the Petitioner has made an application to the CIDCO for grant of development permission. He pointed out that no objection certificate has been issued by the Airport Authority of India to the said construction.

2 The submission of the learned counsel appearing for the Petitioner is that considering the area of the plot of land possessed by the Petitioner, the entire construction which is made by the Petitioner could be regularised. He submitted that an opportunity may be granted to the Petitioner to apply for regularisation.

3 We have considered the submissions. Section 54 of the MRTP Act reads thus :-

“54. Power to stop unauthorised development:-

(1) Where any development of land as indicated in sub-section (1) of section 52 is being carried out but has not been completed, the Planning Authority may serve on the owner and the person carrying out the development a notice requiring the development of land to be discontinued from the time of the service of the notice; and thereupon, the provisions of sub-sections (3), (4), (5) and (6) of section 53 shall so far as may be applicable apply in relation to such notice, as they apply in relation to notice under section 53.

(2) Any person, who continues to carry out the development of land, whether for himself or on behalf of the owner

or any other person, after such notice has been served shall, on conviction 1[be punished with imprisonment for a term which may extend to three years or with fine which may extend to five thousand rupees or with both]; and when the non-compliance is a continuing one, with a further fine which may extend to one hundred rupees for every day after the date of the service of the notice during which the non-compliance has continued or continues.”

4 Admittedly, the CIDCO is the Planning Authority for the area and, therefore, without obtaining development permission from the CIDCO the Petitioner could not have proceeded with the construction.

5 It will be necessary to make a reference to the averments made in the Petition. In paragraphs 5.1 and 5.2, the Petitioner has stated that he along with his wife, sons and their families were residing in old house on the land in question which was in existence for 25 years. Paragraphs 5.3 of the Writ Petition reads thus :-

“5.3 The said houses, had become very old and in dilapidated condition due to which the Petitioner was facing regular problems in residing and making use of the said houses. The Petitioner hence intended to renovate the said houses. The houses are within 200 mtrs. from gaathan, which are hence eligible for exemption. It is also pertinent to note that the structures within the village/gaathan are eligible

for exemption from the acquisition of land for development of new town. The Petitioner's applied to the gram panchayat for permission to erect residential premises. The gram panchayat, by their certificate dated 17th June, 2014 granted No Objection for building permission to the Petitioner for construction/ repair. Hereto annexed and marked as Exhibit 'A' is Residential Building Permission u/s.52 of Bombay Village Panchayat Act.”

6 In paragraph 5.11, the following averments have been made which reads thus :-

“5.11 On 29th October 2015, the petitioner applied to the Respondent no.1, for granting him permission to construct building on the suit land. Accordingly, as per the norms, the persons appointed by the Petitioner viz. Architect, Surveyor, Structural Engineer, and Plumber, applied to the Respondent No.1, seeking permission. The Petitioner is awaiting the approval of the Respondents in this regard. Hereto annexed and marked as Exhibit 'G' Colly. are copies of the letters dated 29th October 2015.”

7. The averments made in paragraph 5.3 show that the Petitioner was aware of the requirement of obtaining prior permission. Instead of applying for permission to the Planning Authority, the Petitioner applied to the Village Panchayat which admittedly had no authority to grant development permission. Exhibit-A is the no objection dated 17th June, 2014 issued by the Village Panchayat. It is a no objection granted by the Village Panchayat for constructing a new

building consisting of stilt (parking) + 3 RCC upper floors. It is not a building permission. It is crystal clear that without obtaining permission of the CIDCO, the Petitioner demolished the old house and he brazenly started construction of RCC structure having total area of more than 4000 square feet.

8. The notice dated 12th June, 2015 was served to the Petitioner. The Petitioner did not reply to the said notice. The averment made in paragraph 5.11 is that the Petitioner applied to the CIDCO for grant of permission to construct building on 29th October, 2015. The present Petition is based on the notice dated 12th June, 2015. In paragraph 12 it is contended that though the notice was issued, it was not served to the Petitioner.

9. On the last date, this Petition was adjourned to enable the learned counsel appearing for the Petitioner to make a statement whether the Petitioner is willing to reduce the structure to a particular area to enable this Court to direct the first Respondent to decide the application for regularisation. Today, the learned counsel appearing for the Petitioner submits that the structure admeasuring 483.96 square meters which was already constructed can be tolerated considering the FSI available.

10. This is not the case where the Petitioner has made a small illegal structure for the benefit of his family. The Petitioner who was fully aware of the requirement of obtaining permission for construction of new building has constructed a RCC structure having total area of approximately 4,000 square feet.

11. There is no notice issued under Sub-Section (1) of Section 53 of the MRTP Act. The Petitioner could have applied as a matter of right for regularisation under Sub-Section (3) of Section 53 if there was a notice issued under Sub-Section (1) of Section 53 of the MRTP Act. Notice dated 12th June, 2015 has been issued by the CIDCO under Section 54(1) of the MRTP Act after noticing that the Petitioner was carrying out illegal construction. The Petitioner was called upon to stop the illegal construction. As we have found that the Petitioner has made RCC construction having an area of approximately 4,000 square feet without obtaining permission of the Planning Authority, no case is made out for showing any indulgence to the Petitioner in exercise of the jurisdiction under Article 226 of the Constitution of India. Accordingly, the Petition is rejected.

(C.V. BHADANG, J)

(A.S. OKA, J)