

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Appeal from Order (ST) NO. 31037 OF 2016
with
Civil Application (ST) No.31039 of 2016

Mrs. Mohini Vijay Kalantri Thr.POA-Mahendra L.Kalantri ...Appellant

Versus

The Municipal Corporation Of Greater Bombay
Thr.its 'H' West Ward and Anr

...Respondents

Mr.S.R.Nargolkar i/b. Deepak Pandey, for the Appellant.

Mr.N.V.Walawalkar, Senior Counsel with Mrs.Madhuri More, for
Respondent no.1 – M.C.G.M.

Ms.Sarina E.Lopez, Respondent No.2 in person present.

CORAM: G.S.KULKARNI, J

DATE : 5 December 2016

P.C.:-

1. Heard Mr.Nargolkar, learned Counsel for the Appellant, Mr.Walawalkar, learned Counsel for Respondent No.1-Corporation and Respondent No.2 in person.

2. After this appeal was heard for some time, Mr.Nargolkar submits that by an order dated 2 September 2016 passed by the Hon'ble Minister (Urban Development)-the Appellate Authority, the regularization application as submitted on behalf of the Appellant has been restored to the Municipal Corporation for re-examination and for fresh orders.

Mr.Walawalkar, learned Senior Counsel for the Municipal Corporation has also drawn my attention to a communication dated 22 September 2016 addressed by the Executive Engineer, Building Proposal, H Ward, informing the Appellant and some other parties that though the earlier regularization proposal as filed by the society and also by some of the private parties were decided, however in pursuance of the directions of the Hon'ble Minister (Urban Development) if a fresh application/proposal is submitted, the same would be examined by the Municipal Corporation and further appropriate decision would be taken.

3. The dispute in the present appeal pertains only in respect of Garage No.2. The contention as urged on behalf of the Appellant is that same was part of the original plans as also there are documents available with the appellant to show that the garage structure is in existence since 1982. It is also the Appellant's contention that the appellant was authorised to construct the said garage structure. Thus Mr.Nargolkar would submit that in pursuance of the said order passed by the Hon'ble Minister and the further communication as being placed on record on behalf of the Municipal Corporation (dated 22 September 2016), the Appellant shall approach the Competent Authority of the Municipal Corporation by filing a fresh proposal for regularization as would be permissible under Section 53(3) read with Section 44 of the Maharashtra Regional and Town Planning Act,1966. Mr.Nargolkar states that a

comprehensive application as per rules would be made for regularization of garage No.2 only. The submission of Mr.Nargolkar in the facts and circumstances deserves to be accepted. Accordingly the Appellants are permitted to make an application for regularization to the Competent Authority of the Municipal Corporation namely the Executive Engineer, (Building Proposal Department), Western Suburb, 'H' Ward. The application be made within a period of two weeks from today. The Competent Authority namely the Executive Engineer, (Building Proposal Department), Western Suburb, 'H' Ward shall consider the application/proposal for regularization as made by the Appellant within a period of four weeks from the submission of the application/proposal. Respondent No.2 would be permitted to appear at the hearing of the said application. Mr.Nargolkar states that as the Appellant has decided to approach the Municipal Corporation by a regularization application, no plea of a separate notice being issued under the provisions of the M.R.T.P Act would be taken on behalf of the Appellant.

4. The Competent Authority of the Municipal Corporation shall consider and decide the regularization proposal of the Appellants in accordance with law without being influenced by any orders passed earlier. The Corporation is at liberty to seek any clarification or documents from the Appellant if the Competent Authority feels necessary.

5. As the appellant intends to make a regularization proposal as per the provisions of M.R.T.P Act, the Respondent Corporation shall not take any coercive action till the communication of decision on the said regularisation application/proposal, to the Appellant.

6. In the circumstances the Appeal from order accordingly would not require any further adjudication. It is accordingly disposed of in the above terms. No costs.

7. In view of the above position, Mr.Nargolkar on instruction of the Appellant prays for withdrawal of L.C.Suit No.2336 of 2014 before before the City Civil Court, Bombay. The suit is accordingly permitted to be withdrawn and disposed of as such.

8. Civil Application would not survive and is accordingly disposed of.

9. Office to forward this order to the Registrar, City Civil & Sessions Court at Mumbai for recording the disposal of L.C.Suit No.2336 of 2014.

{G.S.KULKARNI, J}