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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
WRIT PETITION NO.11789 OF 2015

Anita Vilas Patil ...Petitioner
vs.
The Managing Director,
City and Industrial Development
Corporation of Maharashtra Ltd.
And others ...Respondents

Mr.Rahul Thakur for the Petitioner
Mr.B.B.Sharma for the respondent Nos.1 to 4.
Ms M.P.Thakur, AGP for respondent Nos.5 to 9.

CORAM : A.S.OKA, &
C.V.BHADANG, JJ.
DATE : JANUARY 20, 2016

P.C.:

1 Heard the learned counsel for the petitioner and the learned counsel for the respondent Nos.2 to 4. The case made out by the petitioner in this petition is that she has been living in her house being house no.2103 of village Kopar, (Gavhan) since "time immemorial". It is claimed that the petitioner has been residing in the said House No.2022 of village Gavhan, Taluka Panvel, District Raigad and the said house admeasures 46 X 26 feet. It is claimed that on 10th September 2012, a notice was served to the petitioner under sub-section (1) of section 55 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'the MRTTP Act'). It is contended that the said notice which is impugned in this petition is not valid. Reliance is placed on

the alleged policy of the respondent Nos.1 to 4 under which the structure subject matter of the impugned notice can be regularized. It is contended that an application for regularization made by the petitioner has not been considered on merits.

2 There is a reply filed by Shri Subhash J. Gosavi working as the Controller of the unauthorised constructions of the City and Industrial Development Corporation of Maharashtra Limited (the Planning Authority). To the said reply, a copy of the notice dated 10th September 2012 under sub-section (1) of section 53 of the MRTP Act has been annexed issued by the Planning Authority. It is contended that the construction of the petitioner is on the plot No.40 which is reserved for public health centre and, therefore, the same cannot be regularized.

3 The learned counsel for the petitioner pointed out that the reply reveals that the impugned notice was under sub-section (1) of section 53 of the MRTP Act and, therefore, the application made by the petitioner for regularization ought to have been considered as matter of right.

4 We have considered the submissions. The petitioner is not relying upon any specific permission on the basis of which the house has been constructed. The petitioner in this petition is relying upon the impugned notice dated 10th September 2012 by contending that it was a notice issued under sub-section (1) of section 55. Now, it is

revealed from the reply that the notice was in fact under sub-section (1) of section 53. The application for regularization was made on 23rd November 2015. As per sub-section (3) of section 53, the application for regularization could have been made within the time specified in the said notice. The notice specifies time of 32 days. Hence, the application for regularization was filed very belatedly. There is a delay of three years as admittedly the said notice was received by her on 11th September 2012.

5 Moreover, we find that the construction is a very large construction consisting of ground plus first floor, a part of which is being used for commercial purposes.

6 In view of the stand taken in the reply filed by the respondent Nos.1 to 4, the construction is not capable of being regularized as it is on a reserved plot. The very fact that the petitioner has made an application for regularization shows that she has accepted that the construction is unauthorised. The construction is on a reserved plot.

7 Hence, no case is made out for interference under Article 226 of the Constitution of India. Writ petition is accordingly rejected.

8 At this stage, the learned counsel for the petitioner states that the petitioner may be granted

time of three months to remove the structure which is the subject matter of this petition and the notice dated 10th September 2012.

9 In view of this request, we direct that the action of demolition of the structure shall not be taken for a period of three months from today subject to condition of the petitioner filing unconditional undertaking to this Court within a period of four weeks from today stating that she will remove the structure at her own cost within a period of three months from today. If such undertaking is not filed within stipulated time, it will be open for the respondent Nos.1 to 4 to take action of demolition. If the petitioner fails to abide the undertaking, without prejudice to other remedies available, it will be open for the respondent Nos.1 to 4 to demolish the building/structure on expiry of period of three months from today without any further notice to the petitioner. The Officer in charge of the local police station shall grant adequate police protection to the respondent Nos.1 to 4 for carrying out the work of demolition.

(C.V.BHADANG,J.)

(A.S.OKA,J.)