

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12019 OF 2015

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

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 the petitioner has been living in
the house being house no.2085 of village Koper,
Gavhan since time immemorial. It is claimed that
the petitioner has been residing in House No.2085 of
village Koper Gavhan, Taluka Panvel, District Raigad
and the said house admeasures 80 X 30 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 MRTPA Act'). It is
contended that the said notice is not valid.
Reliance is placed on the policy of the respondent

Nos.1 to 4. 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 construction with the City and Industrial Development Corporation of Maharashtra Ltd. To the said reply, notice dated 10th September 2012 under sub-section (1) of section 53 of the MRTP Act has been annexed. It is contended that the construction of the petitioner is on the plot No.40 which is reserved by the Planning Authority for public health centre and, therefore, the same cannot be regularized. The City and Industrial Development Corporation of Maharashtra Limited is the Planning Authority. The respondent Nos.1 to 4 are the Officers of the Planning Authority.

3 The learned counsel for the petitioner pointed out that the reply reveals that 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 a matter of right.

4 We have considered the submissions. The petitioner is relying upon the notice dated 10th September 2012 in the Writ Petition which according to him was a notice issued under sub-section (1) of section 55. Now, it is revealed that the notice was in fact under sub-section (1) of section 53. The

application for regularization was made on 26th November 2015 in which it is admitted that the notice dated 10th September 2012 was received by the petitioner on 11th September 2012. As per subsection (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 and the delay is of more than 3 years.

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, that the construction is on a reserved plot, it is not capable of being regularized. The very fact that the petitioner has made an application for regularization shows that the petitioner has accepted that the construction is unauthorised.

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 an unconditional undertaking to this Court within a period of six weeks from today stating that he will remove the structure at his 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.)