

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2681 OF 2015
WITH
NOTICE OF MOTION NO. 182 OF 2016
IN
WRIT PETITION NO. 2681 OF 2015

Mrs.Sarina Esmeralda Lopez .. Petitioner/Applicant

Vs.

State of Maharashtra and others .. Respondents

Ms.Sarina Esmeralda Lopez, Petitioner in-person.

Ms.Geeta Joglekar, for B.M.C.

Mr.Umashankar Upadhyay, AGP for State.

Mr.Ravi Suryawanshi a/w Mr.Krunal Mehta i/b Naik Naik & Co., for Respondent No.8.

**CORAM : V. M. KANADE &
M.S.KARNIK, JJ.**

DATE : 12th APRIL, 2016

P.C. :

1. This Motion is taken out in the Writ Petition in which Rule is granted. In the main Petition, the petitioner is seeking the following reliefs.

a) That the Hon'ble Court may be pleased to issue under Article 226 of the Constitution of India an appropriate order/direction of writ including a writ in the nature of

“certotiari” calling for the records and proceedings of the instant Appeal filed by the respondent No. 8 before the respondent No.3 and after satisfying itself as to the legality and maintainability thereof quash and set aside the proceedings of the instant Appeal declaring the same as inadmissible and unmaintainable and further declaring any orders passed in the Appeal in favour of the respondent No.8 as without jurisdiction quash and set aside the said orders and direct the respondent No.7 to implement the notice dated 02.04.2012 issued to respondent No.8.

b)That the Hon'ble Court may be pleased to issue an appropriate direction, order or a writ including a writ in the nature of “mandamus” directing the respondent No. 3 the State Appellate Authority to reject and record Appeal filed by the respondent No. 8.

c) That this Hon'ble Court may suo moto give directions for contempt proceedings against the respondent No.3 for not abiding by the judgments of the higher courts cited by the petitioner in her application to reject and record and proceedings of the instant Appeal.

d)That this Hon'ble Court may suo moto exercise its powers under the Constitution of India to initiate deterrent action or direct the respondent No.3 to take deterrent action against respondent No.8, if it is satisfied that the Appeal was inspired by vexatious motives and altogether groundless.

e) That pending the disposal of the present Petition this Hon'ble Court may be pleased to quash and set aside any orders favoring the respondent No. 8 and declare the same as issued without jurisdiction by the respondent No. 3 in the instant Appeal.

f) That pending the disposal of this Petition this Hon'ble Court may be pleased to issue an order/writ/direction by way of “mandamus” directing the respondent No. 7 to proceed as per directions of the law in the matter of implementation of the MRTTP notice dated 02.04.2012 No. HW/BF/JE-2/MRTTP/53(1)3058 of 2012.

g) That this Hon'ble Court may exercise its writ jurisdiction to pass strictures against the respondent No.3 and give appropriate directions to the concerned authority to initiate action for deliberate disobedience of the law by respondent No.3 as laid down by section 47 of the MRTTP Act, 1966.

h) Ad-interim and interim reliefs in terms of prayer (e) and (f), may be granted.

i) Costs to be provided for.

2. We are informed that the Hon'ble Minister has kept the Appeal for hearing on 20/04/2016. Since the main relief in the Petition is to declare the Appeal itself as not maintainable, we are of

the view that such an order declaring that Appeal itself is not maintainable cannot be passed while exercising our writ jurisdiction under Article 226 of the Constitution of India. We, however, direct the Hon'ble Minister to decide the Appeal within 4 weeks from today on merits and in accordance with law. All the contentions raised by the petitioner about the non-maintainability of the Appeal are kept open. The Hon'ble Minister shall consider all the submissions of the petitioner regarding non-maintainability of the Appeal and shall decide the Appeal after hearing the petitioner and concerned parties.

3. In this view of the matter, the Petition does not survive and the same is disposed of in the aforesaid terms.

4. Since the Petition itself is disposed of, Motion does not survive. However, liberty is granted to the petitioner to file a fresh Petition seeking the reliefs which are claimed by her in the Notice of Motion. Even otherwise, reliefs claimed in the Appeal and in the Writ Petition are totally distinct and different from the reliefs which are claimed in the Motion. Motion also is disposed of in the aforesaid terms.

(M.S.KARNIK, J.)

(V. M. KANADE, J.)