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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.511 OF 2016

WITH

NOTICE OF MOTION (L) NO.432 OF 2015

Madrassa Arabia Rizvia Gousiya Masjid	... Petitioner
Versus	
State of Maharashtra and Ors.	... Respondents

Mr. Sagheer A. Khan a/w Mr. Sachin U. Dhakephalkar & Mr. Sharique R. Nachan i/by Judicare Law Associates for the Petitioner.

Mr. Prashant Chavan a/w Namrata Barot i/by Navdeep Vora & Associates for the Respondent No.5.

Mr. U.S. Upadhyay, AGP for the Respondent Nos.1 to 4.

Mr. Anil R. Mishra for the Respondent No.6.

Mr. Niranjana A. Mogre for Applicant in NMW(L)/432/2015.

**CORAM : A.S. OKA &
ANUJA PRABHUDESSAI, JJ.**

DATE : 22nd DECEMBER, 2016

PC.

1 Rule. The learned AGP waives service for Respondent Nos.1 to 4. The learned counsel appearing for the Respondent No.5 waives service. The learned counsel appearing for the Respondent No.6 waives service. Considering the narrow controversy involved, forthwith taken up for final disposal.

2 We have heard the learned counsel appearing for the parties to the Petition. We have also heard the learned counsel appearing for the Applicant in Notice of Motion (L) No.432 of 2015.

3 The substantive challenge in this Petition under Article 226 of the Constitution of India is to the communication dated 18th May, 2015 issued by the fifth Respondent – the Maharashtra Industrial Development Corporation to the sixth Respondent. A Slum Rehabilitation Scheme is being implemented by the sixth Respondent – developer. It is not in dispute that for the land on which the scheme is being implemented, the fifth Respondent is the Planning Authority within the meaning of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”).

4 The sixth Respondent submitted a plan for approval of the fifth Respondent which inter alia provided for construction of a religious structure in Pocket No.3, Ambedkar Nagar in Marol Industrial area. The plan was sanctioned on 9th June, 2014. It appears that the Senior Inspector of Police, MIDC Police Station addressed a letter dated 10th December, 2014 to the fifth Respondent inviting attention of the fifth Respondent to the Government Resolution dated 23rd November,

2009. It was pointed out that NOC from the Home Department of the Government of Maharashtra was required to be obtained before permitting construction of a religious structure. By the impugned communication, that part of the sanctioned plan which permitted the construction of a Masjid was cancelled.

5 The present Petition is filed by a Madrassa which was in possession of a mosque. The prayer in this Petition is for seeking a writ of mandamus for directing the sixth Respondent to complete the construction as per plans approved by the fifth Respondent. After the Petition was filed, the aforesaid communication dated 18th May, 2015 was produced by the learned counsel appearing for the fifth Respondent on the basis of which the Petitioner carried out amendment to the Petition for challenging the same. There is another prayer in the Petition seeking a declaration that the circular dated 23rd November, 2009 is not applicable to the structure in question. We may note here that the learned counsel for the Petitioner made a statement across the Bar that to avoid any loss of time, in this Petition, the Petitioner is not pressing the challenge in terms of prayer [b(i)] added by way of amendment.

6 On the earlier date, the learned counsel appearing for the sixth Respondent on instructions has stated that the sixth Respondent

will submit a fresh plan to fifth Respondent – Planning Authority proposing construction of the religious structure at a different location. The learned counsel appearing for the Petitioner contended that there is no reason to change the location as the construction was already commenced on the basis of the plan approved by the fifth Respondent on 9th June, 2014. There is some dispute raised across the Bar as regards the correctness of the statement that the construction had already commenced.

7 Nevertheless, it is not disputed that on 9th June, 2014, the fifth Respondent – Planning Authority approved the plan submitted by the sixth Respondent which provided, inter alia, for construction of a religious structure over which the Petitioner is making a claim.

8 We have perused the circular dated 23rd November, 2009. Though in the first part of the circular there is a reference to prevention of the unauthorised construction of places of religion, it provides that by the said circular, the earlier circular dated 7th June, 2000 has been amended. The said circular dated 7th June, 2000 provided that the proposals for permitting construction of religious structure on Government as well as private lands shall be forwarded by the District Collector through the Divisional Commissioners to the State

Government. It is further provided that only such proposals shall be forwarded for which there is an approval of the local authority.

9 The circular dated 23rd November, 2009 and in particular clause 1 specifically provides that in case of Municipal Corporation limits, proposals for new construction of places of religion, for additional construction on the existing religious structures and for the reconstruction of the places of religion shall be forwarded to the Urban Development Department by the Municipal Commissioners before granting development permission. It is further provided that even in case of religious structures within the limits of the Municipal Councils and village panchayats, before granting permissions, the Collector should forward the proposals to the concerned departments of the State Government. The resolution lays down the procedure to be followed for obtaining no objection from the State Government. It is true that the first five clauses do not indicate that the circular is applicable to the Planning Authorities under the MRTP Act other than Municipal Corporations and Municipal Councils. However, clause 6 makes it very clear that without obtaining no objection certificate of the Home Ministry, no construction or reconstruction of places of religion shall be commenced. Therefore, clause 6 will surely apply to the present case. It appears that the fifth Respondent – Planning Authority by ignoring the

said circular permitted the construction to be commenced on the basis of the sanctioned plan dated 9th June, 2014. The fifth Respondent after granting approval to the plan could have forwarded the proposal to the concerned department of the State Government and applied for no objection of the Home Department for grant of permission to commence construction on the basis of sanctioned plan. The commencement certificate could have issued only after NOC was granted by the Home Department. The letter dated 18th May, 2015 which is impugned by way of amendment records that the plan approved for construction of Masjid having built up area of 157.80 square meter is treated as cancelled but the rest of the plan remains valid. In fact, it was the default of the fifth Respondent as it ignored the Government Resolution/circular.

10 The learned counsel appearing for the Applicant in Notice of Motion (L) No.432 of 2015 contends that the Applicant has a strong objection for construction of the structure for which the plan was sanctioned on 9th June, 2014.

11 In this Petition under Article 226 of the Constitution of India, it is not necessary for us to go into the objections raised by the Applicant in the said Notice of Motion. It is for the Applicant to adopt appropriate remedy in accordance with law.

12 We may note here that the suggestion made by the learned counsel appearing for Respondent No.6 for construction of the structure at a different location is not acceptable to the Petitioner.

13 Considering the aforesaid controversy, we dispose of the Petition by passing the following order :-

ORDER

- (i) The impugned communication dated 18th May, 2015 is hereby quashed and set aside;
- (ii) We direct the fifth Respondent - MIDC to forward copies of the sanctioned plan dated 9th June, 2014 to the Home Department of the Government of Maharashtra along with a formal request letter to issue NOC for permitting construction of religious structure as per the sanctioned plan;
- (iii) The fifth Respondent shall forward a copy of the sanctioned plan and a formal proposal to the Home Department of the State Government within a period of one week from the date on which this judgment and order is uploaded on the website;

- (iv) We direct the Home Department of the State Government to take appropriate decision on the request made by the fifth Respondent as expeditiously as possible and in any event within a period of two months from the date on which proposal is received by the fifth Respondent. We make it clear that if report/clearance of any of the Department of the State Government is required for consideration of the said proposal, it will be the responsibility of the Home Department of the State Government to forward the proposal to the concerned Department and to take a final decision within the aforesaid time stipulated by this Court;
- (v) If the Home Department refuses to grant NOC, a communication to that effect shall be issued by the Home Department to the Petitioner, fifth Respondent and the sixth Respondent. Needless to add that it will be open for the Petitioner to challenge the action of refusal to grant NOC;
- (vi) We make it clear that no further construction of the Masjid as provided in sanctioned plan dated 9th June, 2014 shall be carried out till the receipt of NOC from the

Government of Maharashtra. If NOC is granted, the sixth Respondent shall proceed with the construction. If necessary, the sixth Respondent will be entitled to seek police protection from the concerned local Police Station for the purposes of carrying out construction;

(vii) We make it clear that we have made no adjudication on the contentions raised by the Applicant in Notice of Motion (L) No.432 of 2015;

(viii) As recorded earlier, prayer clause [b(i)] is not pressed by the Petitioner;

(ix) Rule is made partly absolute on above terms with no order as to costs;

(x) All concerned to act upon an authenticated copy of this Judgment and Order.

(ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)