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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1491 OF 2017**

Shri. Mahesh Motiram Kumbhar ... Petitioner

Vs.

The State of Maharashtra & Ors. ... Respondents

Mr. Vijay D. Patil i/by Mr. Ashok T. Gade for the Petitioner.

Mr. P.P. More, AGP for the Respondent No.1.

Mr. Sandeep V. Marne for Respondent Nos.2 and 5.

CORAM : A.S. OKA &
SMT. VIBHA KANKANWADI, JJ.

DATE : 26th JULY, 2017

P.C.

1 Heard the learned counsel appearing for the parties. The first prayer in this Petition under Article 226 of the Constitution of India is for directing the concerned respondents to decide the application for regularisation dated 31st January, 2017. Application for regularisation was made in respect of the structure subject matter of notice dated 14th October, 2016 issued by Navi Mumbai Municipal Corporation under Section 54 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act"). Even the said notice is the subject matter of

challenge in this Petition. The fact that the petitioner applied for regularisation of the structure subject matter of the said notice shows that the petitioner has accepted that the construction subject matter of the notice is not lawful.

2 Additional affidavit of the petitioner tendered today shows that the application for regularisation has been rejected by the Municipal Corporation. Now, a remedy of preferring an appeal under Section 47 of the MRTP Act is available to the petitioner. Therefore, this Petition need not be entertained as the prayers made in this Petition do not survive. Accordingly, we pass the following order :-

ORDER

- (i) Writ Petition is rejected;
- (ii) It will be open for the petitioner to prefer an Appeal/Appeals under Section 47 of MRTP Act for challenging the orders passed by Navi Mumbai Municipal Corporation on application/applications for regularisation;
- (iii) To enable the petitioner to prefer an Appeal and to move the Appellate Authority for grant of appropriate interim relief, ad-interim relief granted on 3rd February, 2017

will continue to operate for a period of eight weeks from today.

- (iv) We make it clear that the Appellate Authority shall decide the prayer for interim relief as well as the Appeal on its own merits without being influenced by the continuation of ad-interim relief by this Court.
- (v) We make it clear that ad-interim relief will continue to operate subject to condition that the petitioner will not carry out any further additions and alterations to the structure subject matter of the impugned notice. If the petitioner has not yet occupied the structure subject matter of the impugned notice, he shall not occupy the same unless the structure is regularised. We make it clear that this order shall not be construed to mean that if the petitioner has already occupied the structure, his occupation is held to be lawful.

(SMT. VIBHA KANKANWADI, J)

(A.S. OKA, J)