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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION STAMP NO. 5659 OF 2017

Sudam Manikrao Kothale and ors.

.. Petitioners

Vs.

The Municipal Commissioner, Kalyan  
Dombivali Municipal Council, Kalyan,  
Dist. Thane and ors.

.. Respondents

WITH  
WRIT PETITION NO. 2472 OF 2017

Shravandas Tejram Vaishnav

.. Petitioner

Vs.

Rajaram Baburao Patil & Ors.

.. Respondents

Mr. S. G. Deshmukh i/by Mr. R. M. Haridas for petitioners in WP St. No. 5659 of 2017.

Mr. P. D. Dalvi for petitioner in WP No. 2472 of 2017 and for respondent no.5 in WP St No. 5659 of 2017..

Mr. D. S. Mhaispurkar for respondent nos.2 to 4 in WP St. No.5659/17 and for respondent nos.1 to 3 in WP No. 2472/17.

Mr. Vikas Mali, AGP for State in both the matters.

Mr. A. S. Rao for Corporation in both the matters.

CORAM: NARESH H. PATIL &  
M. S. KARNIK, JJ.

MARCH 03, 2017.

P.C.

1. Petitioners in Writ Petition Stamp No. 5659 of 2017 are the owners and flat purchasers of the subject building known as Sangu Plaza Co-operative Housing Society having its Survey No.34/1/2 (Part) and situated at Star Colony, Manpada Road (Sangaon), Dombivali (E), Taluka – Kalyan, District : Thane. Petitioner in Writ Petition No. 2472 of 2017 is the developer of the subject building/plot.

2. Petitioners are seeking direction against the Corporation not to demolish the subject building/structure and to decide the application that may be filed by the petitioners to regularize the subject building/structure.

3. Petitioners contend that the subject building was constructed in the year 2008 by Om Sai Builders and Developers. Petitioners occupied the building thereafter and since then they are in continuous occupation of the said building. A notice was issued by the Mumbai Metropolitan Region Development Authority (MMRDA) on 19/11/2010 under the provisions of the Maharashtra Regional Town Planning Act, 1966 (MRTP

Act, 1966). The MMRDA termed the subject construction as unauthorized one and directed that within 30 days from the date of receipt of the said notice, the building shall be demolished. Om Sai Builders and Developers and the occupants of the subject building filed Writ Petition Nos. 10429 of 210 and Writ Petition No. 10787 of 2011 challenging the action initiated by the respondents therein i.e. MMRDA under Section 53 of the MRTP Act, 1966. The owners of the plot, respondent no.2 to 4 in Writ Petition St. No. 5659 of 2017, who are respondent nos.1 to 3 in Writ Petition No. 2472 of 2017, had also filed Writ Petition No. 2715 of 2010, which came to be disposed of on 6/7/2010 permitting them to file representation to the concerned authorities who were in turn expected to decide the same. Pursuant to the said order passed by this court, the appropriate authority (MMRDA) passed order on 18/11/2010 holding that the noticees have failed to produce any sanctioned building plan issued by the Town Planning Authority. The MMRDA was of the view that building in question was unauthorized and deserved to be demolished forthwith, especially because the same was affecting the Town Planning Scheme.

4. Petitioners herein adopted a stand that they had obtained permission for construction from Village Panchayat Nandivali Panchanand,

Taluka – Kalyan, District – Thane on 31/3/2006. The Division Bench of this court declined to place reliance on the said permission. Writ Petition Nos.10429 of 2010 and Writ Petition No.10787 of 2011 were dismissed as devoid of merits.

5. It is informed to this court that the petitioners therein had filed Special Leave Petition in the Apex Court against the order passed by the Division Bench of this Court on 13/3/2012. By an order dated 17/1/2014, the Apex Court dismissed the SLP filed by the occupants and others.

6. It is submitted that in the year 2011, the occupants had filed Civil Suit in the court of Civil Judge, S.D., Kalyan, questioning very notice issued by MMRDA under Section 53 of the MRTP Act, 1966. It is submitted by the learned counsel appearing for the petitioners that there was order of status quo passed by the Civil Court. Learned counsel further submits that the MMRDA filed a pursis in the Civil Court on 11/2/2017 stating therein that the Nandivali Village is not within the jurisdiction of the MMRDA. The matter was kept before the Lok-Nyayalaya for compromise and settlement. The terms of settlement were drawn. Accordingly, an award was passed, which reads as under :-

“We have arrived at settlement terms willingly before the Lok Nyayalaya held on 11/2/2017 at 10.30. No coercion or force is applied to arrive at settlement. This case be disposed of as settled accordingly.

### **Award**

The matter is amicably settled as above before the Lok-Nyayalaya held on 11/2/2017 at Kalyan before the panel consisting of (i) Head of the panel Shri P. S. Chandgude (Acting Judge), (ii) First Panel Member, (iii) Second Panel Member. We pass this award in terms of above settlement. The Court Fee be refunded as per S. 16 of Court Fee Act, 1870, r/w Sec. 21 of Legal Services Authorities Act, 1987”.

In view of the above, learned Civil Judge passed the order which reads as under:

“ In view of terms of settlement at Exh. 37 took place in Lok Adalat, suit stands disposed off as withdrawn. Decree be drawn accordingly.”

7. Learned counsel appearing for the petitioners submitted that on 27/2/2017, they filed an application under Section 44 of the MRTP Act, 1966 seeking regularization of the subject structure/building. Learned

counsel interprets that from the date of the settlement, the petitioners were entitled to file application for regularization within reasonable time or within 30 days period as stipulated under Section 53(3) of the MRTP Act, 1966. Present Planning Authority is Kalyan Dombivali Municipal Council under whose territorial jurisdiction the subject structure / building situates would take appropriate decision on the application filed by the petitioners, seeking regularization of the subject structure.

8. Mr. Dalvi, learned Counsel appearing for the developers supports contention of the learned counsel appearing for the petitioners/occupants. Learned counsel further submits that in view of the facts stated above, necessary directions are required to be given to KDMC to pass appropriate orders on the application.

9. Learned counsel appearing for the KDMC, Mr. Rao, submits that in accordance with provisions of Section 53(3), within 30 days' period the petitioners could have filed application for regularization which they did not file. The merits of the notice issued by the MMRDA in the year 2010 cannot be questioned now in the present petition. After dismissal of the petitions filed by the occupants as well as developer and the dismissal

of the SLP by the Apex Court, the petitioners continued with the civil proceeding filed in the Civil Court in the year 2011, which would be of no help to the petitioners. Therefore, the plea raised by the petitioners is devoid of merits.

10. We have perused the record placed before us, the order passed by the Division Bench on 13/3/2012 and the order passed by the Apex Court. Section 53 (1) and (3) of the MRTP Act, reads as under :

**53. Power to require removal of unauthorized development**

(1) Where development of land has been carried out as indicated in sub-section (1) of section 52, the Planning Authority may, subject to the provisions of this section, serve on the owner a notice requiring him, within such period, being not less than one month, as may be specified, therein after the service of the notice, to take such steps as may be, specified in the notice.

(a) in case specified in clause (a) or (c) of sub-section (1) of section 52, to restore the land to its condition existing before the said development took place,

(b) in cases specified in clause (b) or (d) of sub-

section (1) of section 52, to secure compliance with the conditions or with the permission as modified:

Provided that, where the notice requires the discontinuance of any use of land, the Planning Authority shall serve a notice on the occupier also.

(2) .....

(3) Any person aggrieved by such notice may, within the period specified in the notice and in the manner prescribed, apply for permission under section 44 for retention on the land of any building or works or for the continuance of any use of the land, to which the notice relates, and pending the final determination or withdrawal of the application, the mere notice itself shall not affect the retention of buildings or works or the continuance of such use.”

11. Admittedly, the petitioners did not file application for regularization within 30 days' period after issuance of notice by MMRDA on 6/4/2010. Their challenge to the notice and the plea that they had obtained permission from the Village Panchayat was negated by this Court. The petitioners failed in Apex Court but even thereafter they continued to prosecute their civil proceeding. On pursis filed by the MMRDA, the petitioners arrived at and agreed for a settlement and

accordingly the matter was settled on the plea of the MMRDA to the effect that the subject villages were now part of area of KDMC. In the facts, it would not be appropriate for this court to observe anything on the agreement and settlement entered into by the petitioners before the civil court. It was for the petitioners to take appropriate decision in respect of prosecuting their remedies before the appropriate forum.

12. The issue raised before this court is that in accordance with the provisions of Section 53(3) of MRTP Act, 1966, the petitioners are still entitled to file an application for regularization which they claim to have filed on 27/2/2017, during the period prescribed starting from the day of disposal of the suit i.e. 11/2/2017. In view of the express provisions of Section 53(3) and in the facts of the case, we are not inclined to accept this plea. The contention raised in this behalf stands rejected. There is no merit in the petitions. The petitions are dismissed.

13. At this stage, learned counsel appearing for the petitioners prays for continuance of order of status quo order for further period of four weeks. The request is opposed by the learned counsel appearing for the respondents.

14. In the facts, we find it appropriate to grant order of status quo for a period of four weeks from today.

15. The parties before this court shall maintain status quo in respect of the subject structure / building for a period of four weeks from today.

**(M. S. KARNIK, J.)**

**(NARESH H. PATIL,J.)**