

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 6137 OF 2017

Mandakini Realtors

... Petitioner

V/s.

Kalyan Dombivali Municipal Corporation & Ors.

... Respondents

Mr. Umesh Mankapure for the Petitioner

Mr. A.S. Rao for the Respondent No.1.

Mr. Manish Pabale, AGP for the Respondent No.2.

Mr. D.B. Patil and Ms. Meenakshi Patil for the Respondent No.3.

CORAM : A.S.OKA &

SMT. VIBHA KANKANWADI, JJ.

DATE : 07th JULY, 2017

P.C.:

. Heard the learned Counsel appearing for the Petitioner, the learned Counsel appearing for the first Respondent, the learned AGP appearing for the second Respondent and the learned Counsel appearing for the third Respondent.

2 The challenge in this petition under Article 226 of the Constitution of India is to the notices issued on 21st January 2017, 07th April 2017 and 26th April 2017 calling upon the Petitioner to remove and/or demolish the illegal structure.

3 The Petitioner has filed an affidavit dated 13th June, 2017. The paragraph Nos. 5 to 7 of the said affidavit read thus:

“5 I say that though sanction of TDR is issued by the Asst.

Town Planner of Respondent No.1, the DRC has to be issued by Commissioner, thereafter further process of regulation will be initiated.

6 *I say that, as soon as the Commissioner of Respondent No.1 signs and issues DRC, the Petitioner shall apply for regularization/loading of TDR within 2 weeks thereafter the Respondent may be directed to decide the same within 8 weeks from submission of proposal.*

7 *I say that, in case the Respondent No.1 refuse to regularize and/or allow to utilize the T.D.R. Finally, the Petitioner shall unconditionally remove and/or demolish the unauthorized construction, qua the notices issued with 4 weeks from date of such refusal at his own cost. Hence, this undertaking cum affidavit.”*

4 Today, the learned Counsel appearing for the first Respondent states that Development Right Certificate granting TDR to the extent to 2620 sq. meters is ready and only the Municipal Commissioner has to sign the same.

5 The Petitioner has tendered across the bar a letter dated 03rd June, 2017 showing that on 25th April, 2017 a proposal for regularization is already submitted by the Petitioner.

6 The learned Counsel appearing for the third Respondent submits that an action of granting TDR/FSI to the Petitioner is illegal. In this petition, we are not concerned with the legality of action of granting TDR. If the third Respondent has any grievance, he is free to adopt an appropriate proceeding in accordance with law. Suffice to say that the Petitioner has accepted that the construction subject matter of impugned notices is illegal and he has already applied for the regularization. The Petitioner has already given an undertaking to remove the construction as mentioned in the impugned notice, in the event the application for regularization is rejected.

7 Hence, we dispose of this petition by passing the following order:-

ORDER

i) We accept the statement of the learned Counsel appearing for the first Respondent that the Development Rights Certificate will be issued to the Petitioner within a period of one week from today;

ii) The application for regularization made by the Petitioner shall be decided by the first Respondent within a period of sixty days from today. An order passed on the said application shall be communicated to the Petitioner's Architect;

iii) Till the date of communication of the order passed on application for regularization already made by the Petitioner to the Petitioner's Architect, the ad-interim relief granted on 13th June, 2017 will continue to operate;

iv) If the order be adverse to the Petitioner, the ad-interim relief will continue to operate for a period of four weeks from the date on which the order is communicated to the Petitioner's Architect to enable the Petitioner to comply with the undertaking incorporated in paragraph 7 of the affidavit of the Petitioner quoted above;

v) The said undertakings of the Petitioner in the affidavit dated 13th June, 2017 are hereby accepted;

vi) We make it clear that we have made no adjudication on the *inter se* dispute between the Petitioner and the third Respondent. All contentions of the parties in that behalf are kept open;

vii) Writ Petition is disposed of on the above terms.

(SMT. VIBHA KANKANWADI, J.)

(A.S.OKA, J.)