

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3912 OF 2016

Shri Mirasab Khudbuddin Sanadi,
President,
Touhid Educational and Islamic Cultural Trust. .. Petitioner

Vs

The State of Maharashtra and Others. .. Respondents

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Shri Umesh R. Mankapure i/b Shri Akshay P. Shinde for the Petitioner.

Shri A.I.Patel, Addl.G.P For the Respondent Nos.1, 4 and 5.

Shri G.H. Keluskar for the Respondent Nos.2 and 3.

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

DATED : 10TH JULY 2017

P.C.

1. Rule. The learned AGP waives service for the first, fourth and fifth Respondents. The Advocate on record for the fifth Respondent waives service. Taken up forthwith for final disposal.

2. The Petitioner was granted a development permission under Section 45 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”). The development permission was granted by Sangli-Miraj-Kupwad City of Municipal Corporation (for short “the said Corporation”) on 27th March 2006. By a letter dated 4th

April 2006, the Town Planner of the said Corporation directed the Petitioner not to carry on construction on the basis of the said development permission.

3. The submission made by the learned counsel appearing for the Petitioner is that once a development permission is granted under Section 45 of the MRTP Act, the same cannot be stayed without giving an opportunity of being heard to the Petitioner. He submitted that after the stay was granted, the said Corporation had agreed to give an alternate accommodation which has not been given so far. The learned counsel appearing for the second and third Respondents opposed the Petition.

4. We have considered the submissions. Once a development permission is granted under Section 45 of the MRTP Act, a right created in favour of a person to whom such permission is granted. No such order of stay, therefore, can be passed without giving an opportunity of being heard to the persons whose rights are affected by the grant of stay. The law on this aspect has been laid down by the Division Bench of this Court in the decision in the case of Mahavir Enterprises and Others v. State of Maharashtra and others¹.

¹ 1999 Mh.L.J.1015

5. Only on this ground, the impugned communication preventing the Petitioner from carrying on construction will have to be set aside.

6. However, in view of the provisions of Section 48 of the MRTP Act, now the Petitioner will have to make a fresh Application for grant of development permission, as on the basis of the permission granted in the year 2006, further construction cannot be carried out.

7. Accordingly, we dispose of the Petition by passing the following order.

ORDER :

- (a) The impugned communication dated 4th April 2006 is hereby quashed and set aside;
- (b) However, we make it clear that it will not be open for the Petitioner to commence the development work on the basis of the development permission dated 27th March 2006;

- (c) It will be open for the Petitioner to make a fresh Application for grant of development permission before the concerned authorities;
- (d) If such an Application is made in the prescribed format through a licensed Architect, the same shall be decided on its own merits in the light of the observations made in this Judgment as expeditiously as possible and in any event within a period of 60 days from the date on which such Application is made by the Petitioner;
- (e) Rule is, accordingly, made partly absolute on above terms;
- (f) No order as to costs.

(SMT.VIBHA KANKANWADI, J)

(A.S. OKA, J)