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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8115 OF 2016**

Shankar Parvati Phadtare ... Petitioner
Vs.
Kalyan Dombivli Municipal Corporation and Ors. ... Respondents

**CIVIL APPLICATION NO.2849 OF 2015
IN
WRIT PETITION NO.8115 OF 2015**

ChannurBhavan CHS ... Applicant
In the matter between
Shankar Parvati Phadtare ... Petitioner
Vs.
Kalyan Dombivli Municipal Corporation and Ors. ... Respondents

Mr. Atul G. Damle, Senior Advocate i/by Mr. Suresh M. Sabrad for the
Petitioner.

Mr. Sumit S. Kothari for the Applicant.

Mr. A.S. Rao for the Respondent Nos.1 to 5.

Ms. N.M. Mehra, AGP for the Respondent No.6.

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

DATE : 28th JUNE, 2017

PC.

1 Heard the learned Senior Counsel appearing for the
petitioner. An order was made on 10th September, 2013 by the
Designated Officer of the Kalyan Dombivli Municipal Corporation under

Sub-Section (2) of Section 260 of the Maharashtra Municipal Corporations Act, 1949 (for short “the said Act”) holding that the structure subject matter of this Petition in which the petitioner was carrying out business of selling sugarcane juice was illegal on the ground that the petitioner could not file any document showing that the structure was authorised. The said order was subjected to a challenge in Writ Petition No.9022 of 2013 filed by the petitioner. By the order dated 17th April, 2014, the said Petition was disposed of. Clause 1 of the said order dated 17th April, 2014 reads thus :-

“1 Heard the learned counsel for the petitioner and the learned counsel for the respondents. The learned counsel for the petitioner on instructions of the petitioner who is stated to be present in the Court states that the petitioner is not pressing this petition on merits and he will apply for regularization of the structure subject matter of this petition. He states that a proper application will be made within a period of eight weeks from today.”

2 By the said order, protection was granted to the petitioner to enable him to apply for regularization of the structure.

3 Accordingly, an application for regularization was made by the petitioner which was rejected by communication dated 1st February, 2014. An Appeal was preferred by the petitioner under Section 47 of

the MRTP Act, 1966 for challenging the order rejecting application for regularization. By the impugned order, the State Government which is the Appellate Authority has dismissed the said Appeal.

4 The submission of the learned Senior Counsel appearing for the petitioner is that when the petitioner earlier applied for regularization, he was not aware that there was a sanctioned plan dated 23rd April, 1965 which was approved by the erstwhile Dombivli Municipal Council. He submitted that the sanctioned plan was produced by the petitioner and attention of the Appellate Authority was also invited to the said sanctioned plan. He submitted that the impugned order shows that the none of the parties disputed the existence of the sanctioned plan of 23rd April, 1965 which shows that the structure subject matter of this Petition is authorised. He submitted that without considering the said sanctioned plan, the impugned order has been passed.

5 We have considered the submissions. As stated earlier, the order of demolition made by the Municipal Corporation under Sub-Section (2) of Section 260 of the said Act was challenged by the petitioner by filing a Writ Petition. The Writ Petition was not pressed and in fact, the petitioner made a statement that the petitioner will

apply for regularization. The fact that the petitioner stated that he would apply for regularization shows that the petitioner accepted that the subject structure was unauthorised. Moreover, the challenge in the earlier Petition was to the order of demolition passed by the Municipal Corporation after hearing the petitioner. As the Petition was not pressed, the order of demolition has attained finality.

6 The Appellate Authority in the impugned order has come to conclusion that as per the prevailing Development Control Regulations, the structure cannot be regularised.

7 The Appeal preferred by the petitioner was against the order rejecting the application made by the petitioner for regularisation. In the said Appeal, the contention that the structure was authorised was not open to the petitioner. Moreover, the Appellate Authority has observed that in the copy of the alleged sanctioned plan dated 23rd April, 1965, the structure is shown as proposed garage and weather shed. The petitioner is using the said structure for running a shop for selling sugarcane juice.

8 There is no challenge to the findings recorded in paragraph 3 of the impugned order wherein it is alleged that as per the prevailing

Development Control Regulations which are part of the sanctioned development plan, the structure cannot be regularised.

9 The learned Senior Counsel appearing for the petitioner submitted that the petitioner will apply for modification of the order dated 17th April, 2014 in Writ Petition No.9022 of 2014. It is too late in the day to make such an application.

10 Hence, we find no merit in the Writ Petition and accordingly, the Petition is rejected. Ad-interim relief which is operative till today will continue to operate for a period of ten weeks from today. Civil Application No.2849 of 2015 does not survive and the same is disposed of.

(SMT. VIBHA KANKANWADI, J)

(A.S. OKA, J)