Jsn

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12371 OF 2017

Gaurav V. Nevatia … Petitioner
Versus
The Municipal Corporation of Greater Mumbai & Ors. …Respondents

Mr. Pradeep J. Thorat, for the Petitioner.
Mr. Pradeep M. Patil, for Respondent Nos. 1 to 3 / M.M.C.
Mr. V.N. Sagare, AGP for Respondent No.4.
Mr. Amogh Singh, i/b D.P. Singh for Intervener.

CORAM: SMT. VASANTI A NAIK AND MR. RIYAZ I. CHAGLA, JJ.
DATED: 30TH NOVEMBER 2017

PC:-

Heard. By this writ petition, the petitioner challenges order of the state government refusing to regularise the construction made by the petitioner, under Section 47 of the Maharashtra Regional and Town Planning Act.

Shri Thorat, the learned counsel for the petitioner challenges the impugned order mainly on two grounds. It is submitted that though the Hon'ble Minister had granted a hearing in the appeal to the concerned parties on 28th September 2016, the appeal was decided as belatedly as in October 2017. It is submitted that some of the grounds raised by the petitioner were not considered by the Hon'ble Minister in the impugned order. Secondly, it is submitted that the Hon'ble Minister had called for the report pertaining to the construction of the structure from the municipal corporation and without waiting for the said report, the impugned order is passed.

The learned counsel for the corporation states that though the state government asked the corporation to furnish the report and the report in respect of the premises of the petitioner was ready, the same was not tendered to the state government. It is submitted that the report would be furnished to the state government within one month, if this Court remands the matter to the state government for a fresh decision on merits.

The learned counsel for the society states that the report would not be helpful to the petitioners as according to the report of the corporation the structure cannot be regularised.

Since the state government had directed the corporation to furnish a report pertaining to the matter in respect of the petitioner, it was necessary for the state government to have waited for the report of the corporation to be tendered. If the corporation was not submitting the report within a reasonable time, the state government ought to have asked the corporation to submit the same within a short time. It appears that the hearing in the appeal was granted on 28th September 2016 and the impugned order is passed on 10th October 2017. That gives us a reason to believe that the submissions made on behalf of the parties must not have been considered by the state government as the arguments were made by the parties more than a year earlier.

We do not appreciate the submission made on behalf of the society that as per the report of the corporation, the structure cannot be regularised. We find from the report that only in respect of a small area of ducts and projections, it is stated that the same cannot be regularised as per the CRZ notification and DC Rules / Regulations. Such an observation is not there in respect of the other alleged illegal construction. In any case, it would be for the state government to appreciate the report of the corporation and then decide the matter.

Hence, for the reasons aforesaid, the writ petition is partly allowed and the impugned order is quashed and set aside. The matter is remanded to the state government for taking a fresh decision in the appeal filed by the petitioner as early as possible. The parties undertake to appear before the state government on 15th January 2018, so that the issuance of notice to the parties could be dispensed with. The corporation is directed to positively submit the report to the state government before 15th January 2018. As far as possible, the state government should decide the appeals of all the residents in the building together to avoid conflicting orders. It is needless to mention that the alleged illegal construction would remain protected till the appeal is decided by the state government. Order accordingly. No costs.

(RIYAZ I. CHAGLA J.) **(SMT. VASANTI A. NAIK, J.)**