

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11244 OF 2013

Sanjay Karnavat. .. Petitioner
Vs
Pune Municipal Corporation and Others. .. Respondents

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Shri Kayval P. Shah for the Petitioner.
Shri Rajdeep S. Khadapkar for the Respondent Nos.1 and 2.
Shri A.A. Alaspurkar, AGP for the Respondent No.3.
—

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

DATED : 24TH JULY 2017

PC.

1. Heard learned counsel appearing for the Petitioner, the learned counsel appearing for the first and second Respondents and the learned AGP for the third Respondent.

2. The averments made in the Civil Application No.1301 of 2014 disclose that the Application for regularization made by the Petitioner has been rejected by the first Respondent and the rejection has been communicated to the Petitioner by a letter dated 2nd January 2014. The rejection is on the ground that in breach of the orders of this Court, the construction of ground floor has been carried out.

3. The learned counsel appearing for the Petitioner submits that the ground taken in the said communication is totally unjustified as there is no such construction carried out.

4. In any event, it is not necessary for us to go into the question whether the reason given in the communication dated 2nd January 2014 is right or wrong inasmuch as the remedy of preferring an Appeal under Section 47 of the Maharashtra Regional and Town Planning Act, 1966 is available to the Petitioner.

5. The challenge in the Writ Petition was to the notice dated 19th November 2013. The fact that the Petitioner applied for regularization shows that the Petitioner has accepted the correctness of the said notice and the allegations made therein.

6. We may also note that there is a challenge to the constitutional validity of Section 433A of the Maharashtra Municipal Corporation Act, 1949. As the Petitioner has accepted the legality of the impugned notice, there is no reason to go into the said challenge.

7. There is no reason to entertain this Petition wherein the challenge is to the said notice.

8. Accordingly, we pass the following order:-

ORDER :

- (a) The Prayer Clause (a) is rejected;
- (b) The Prayer Clause (b) does not require consideration in this Petition. However, remedy of the Petitioner in that behalf is kept open;
- (c) This order will not preclude the Petitioner from preferring an Appeal against the communication dated 2nd January 2014. If Appeal is preferred within a period of four weeks from today, the concerned Authority will note that the Civil Application No.1301 of 2014 for incorporating a challenge to the said communication/order was filed in April 2014 which remained pending till today;
- (d) Civil Application No.1301 of 2014 does not survive and the same is disposed of;

- (e) To enable the Petitioner to move the Appellate Authority, the ad-interim relief which is operative in the Application is extended by a period of two months from today;
- (f) We make it clear that the Application for interim relief or the Appeal shall be considered without being influenced by grant of ad-interim relief and continuation thereof.

(VIBHA KANKANWADI, J)

(A.S. OKA, J)