

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

**WRIT PETITION NO. 2914 OF 2017
WITH
CIVIL APPLICATION NO.2845 OF 2017
IN
WRIT PETITION NO.2917 OF 2017**

New Maharashtra Education
Society

... Petitioner.

Versus

The State of Maharashtra
and others.

... Respondents.

....

Mr. Uday P. Warunjikar for the Petitioner.

Ms. Nisha Mehra, AGP for Respondent-State.

Mr. Aashutosh Kulkarni a/w Mr. Akshay A. Kulkarni for intervenor
in CA No.2845/2017.

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***CORAM : Smt. Vasanti A Naik &
Riyaz I. Chagla, JJ.***

DATE : 07th December, 2017.

P.C. :

Heard.

The petitioner challenges the order of the State Government, dated 02.09.2015 rejecting the appeal filed by the petitioner under Section 47 of the Maharashtra Regional and Town Planning Act.

According to the petitioner, since the structure in which the petitioner-Education society is running the school was constructed without securing the permission and sanction for the construction

of the same, the petitioner had applied to the Corporation for regularisation of the structure. The Corporation rejected the application. The petitioner had filed an appeal before the State Government under Section 47 of the Act. The appeal was dismissed by the order dated 02.09.2015, that is impugned in the instant petition.

Mr. Warunjikar, the learned counsel for the petitioner submitted that the order passed by the State Government is not a reasoned order, in as much as, not a single reason is recorded by the State Government for reaching to the conclusions that are recorded in the same. It is stated that in the impugned order, the State Government has only recorded the submissions of the petitioner, the Corporation and the Director of town planning. It is stated that after recording the said submissions, the State government has rejected the appeal for regularisation without recording any reasons for reaching to the conclusion that the petitioner had not earmarked 40% of the open space for the play ground and had not produced the relevant documents to prove his title. It is submitted by taking this Court though the appeal filed before the State Government that the petitioner had pointed out as to how the land admeasuring approximately 7 acres was transferred to the petitioner for construction of the school. It is submitted by tendering some photographs in the Court that more than 40% of the plot of land is being utilized as a play ground. It is stated that the order is passed without application of mind, in as much as, it is recorded in the impugned order that the regularisation cannot be granted as due permissions and sanctions

were not secured by the petitioner before making the construction. It is stated that had the construction been made after securing due permissions, there was no necessity to apply for regularisation.

Ms. Mehra, the learned Assistant Government Pleader appearing for the State Government submitted that principally the appeal for regularisation is rejected because the petitioner could not produce the registered documents showing that the plot of land was transferred by Shri Murdha Rajendra Lingayat boarding trust to the petitioner trust. It is however fairly admitted that after recording the submissions made on behalf of the parties, the Hon'ble Minister has reached to the conclusions without recording any reasons.

In the circumstances of the case, it would be necessary to quash and set aside impugned order and remand the matter to the State Government for a fresh decision in accordance with law. On a reading of the impugned order, we find much force in the submission made on behalf of the petitioner that the order is sans reasons. We find that the hon'ble minister has noted the submissions made on behalf of the petitioner, the Corporation and the town planning authority in detail, but has not recorded any reasons for not accepting the submissions made on behalf of the petitioner. We find that though more than 40% of the land is earmarked for a play ground, it is wrongly observed in the impugned order that the development plan does not show that 40% of land is earmarked for the play ground. The State Government ought to have considered that since the construction

was not made in accordance with the permissions and sanctions, the petitioner had approached the Corporation and the State Government for regularisation of the Construction. In any case, since reasons are not recorded for rejecting the claim of the petitioner for regularisation after recording the submissions made on behalf of the petitioner, the impugned order is liable to be quashed and set aside.

Hence, for the reasons aforesaid, the writ petition is partly allowed. The impugned order is quashed and set aside. The matter is remanded to the State Government for a fresh decision in the appeal filed by the petitioner in accordance with law. It is needless to mention that till the appeal of the petitioner is decided, no coercive steps for the demolition of the structures could be initiated by any of the respondents. Order accordingly. No costs.

With the disposal of the writ petition, civil application no.2845/2017 also stands disposed of.

(Riyaz I. Chagla J)

(Smt.Vasanti A Naik, J)