

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2913 OF 2015

Shri. Dhruvkumar M. Pancholi & Ors. ... Petitioners.

V/s.

**The Hon'ble Minister of Urban Development
and Ors. ... Respondents**

Mr. K.T. Babu i/b Mr. S.P. Borhabe for the Petitioner.
Mr. G. W. Mattos, AGP for the the Respondent Nos. 1 and 2.
Ms. Vandana Mahadik for the Respondent No.3.
Mr. Ravi Gadagkar i/b Ms. Usha Gadagkar for the Respondent No.4.

**CORAM : A.S.OKA &
SMT. VIBHA KANKANWADI, JJ.
DATE : 22nd JUNE, 2017**

P.C.:

. Heard the learned Counsel appearing for the Petitioners, the learned Counsel appearing for the forth Respondent, the learned Counsel appearing for the third Respondent and the learned AGP appearing for the first and second Respondents.

2 Rule. The Respondents waive service. Forthwith taken up for the final disposal. The Petitioners made an application under Section 44 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act"). The said application was for regularisation of extension of ground floor. The said application was rejected by Mumbai Municipal Corporation by order dated 31st

January 2015.

3 The Petitioners preferred an Appeal under Section 47 of the MRTP Act before the State Government. By the impugned order dated 30th June, 2015, the Appeal is dismissed by the State Government.

4 The reasons recorded by the Appellate Authority are only in 2 paragraphs. One reason recorded is that plea of “deemed permission” under Sub-Section 5 of the Section 45 of the MRTP Act is not available to the Petitioners. The second reason recorded is that unless No Objection Certificate (NOC) of the fourth Respondent Society is produced permitting to Petitioner to use balance FSI, application for regulation could not have been considered.

5 The learned Counsel appearing for the Petitioners states that the Petitioners are giving up the plea of “deemed permission” under Sub-Section 5 of Section 45. As far as the merits of the Appeal are concerned, the only ground held against the Petitioners is that the Petitioners have not produced NOC of the 4th Respondent Society. The Appellate Authority ought to have gone into question whether the society is the owner of the balance FSI, if any. Unless it is found that the Society is the owner of the balance FSI, the Appeal could not have been dismissed on the ground that NOC of the Society was not produced.

6 As the Appellate Authority has not recorded the reasons as to why NOC of the Society was required, it will be appropriate that the Appeal is remanded to the Appellate Authority.

7 Accordingly, we pass the following order:-

ORDER

- i) Impugned order dated 30th June, 2015 is hereby quashed and set aside;
- ii) We direct the Petitioners or their authorised representatives to appear before the Appellate Authority on 14th July, 2017 at 3.00 p.m. for the purpose of fixing a date of hearing. It will be also open to the representative of the fourth Respondent to appear before the Appellate Authority;
- iii) We direct the Appellate Authority to decide the Appeal afresh as expeditiously as possible, in the light of observations made in the judgment;
- iv) The Appeal shall be preferably decided within a period of three months from the date fixed for appearances of the parties;
- v) We make it clear that plea of “deemed permission” under Sub-Section 5 of Section 45 of the Maharashtra Regional and Town Planning Act, 1966 will not be available to the Petitioners;
- vi) The ad-interim relief granted by this Court on 26th October 2015 shall continue to operate till the date on which the order passed in the Appeal is communicated to the Petitioners;
- vii) If the order be adverse to the Petitioners, the ad-interim relief shall continue to operate for a period of six weeks from the date on which the order is communicated to the Petitioners;
- viii) All the contentions on merits of Appeal are kept open;
- ix) The Writ Petition is disposed of on above terms.
- x) The Appellate Authority to act upon an authenticated copy of this order.

(SMT. VIBHA KANKANWADI, J.)

(A.S.OKA, J.)