

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

WRIT PETITION NO.1361 OF 2014

Mrs. Rama Shreekrishan Puri	...Petitioner
Versus	
Mumbai Municipal Corporation & Ors.	...Respondents

Mr. Pramod Bhosale i/b. Mr. S.K. Bhosle for the Petitioner.
Ms. Pallavi Thakar for the Respondent Nos.1 and 2.
Mr. Rajiv Narula i/b. M/s. Jhangiani Narula & Associates for the
Respondent No.3.

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

DATE : 16th JUNE, 2017

P.C.:

1. Heard the learned Counsel appearing for the petitioner, the learned Counsel appearing for the third respondent and the learned Counsel appearing for the first and second respondents.

2. By this petition under the Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of notice dated 13th November, 2013 issued by the respondent no.2 under Section 53(1) of the Maharashtra Regional and Town Planning Act (in short "MRTP Act"). By the said notice, the petitioner was called upon to remove unauthorized work of G.I. fencing in the open space of the building situated on Plot No.42, Union Park, Chembur, Mumbai – 71.

3. The petitioner has tendered an undertaking on oath in which she has stated that she intends to make an application for regularization of the work, which is the subject-matter of the impugned notice. She has given an undertaking in paragraph 4 to remove the G.I. Sheets fencing within a period of 8 weeks from the date of intimation of rejection, if any, of the regularization proposal. The undertaking of the petitioner is accepted.

4. Even under Sub-Section (3) of Section 51 of the M.R.T.P. Act, the petitioner could have applied as a matter of right within 30 days from the receipt of the impugned notice for regularization.

5. The fact that the petitioner has agreed to apply for regularization shows that the petitioner has accepted that the work, which is the subject-matter of the impugned notice, has been carried out without obtaining permission of the Municipal Corporation. In view of the undertaking, a permission deserves to be given to apply for regularization. Accordingly, the writ petition is disposed of as follows:-

ORDER

(i) It will be open for the petitioner to apply for regularization within a period of 8 weeks from today. The application for regularization shall be made by the petitioner in the prescribed format as per the relevant rules and regulations;

(ii) If such application is made, the Municipal Corporation shall decide the same as expeditiously as possible and, in any event, within a period of 60 days from the date of filing of the application;

(iii) The order passed on the application shall be communicated to the petitioner or the petitioner's licensed Architect. Till the date of communication of the order passed on the regularization application to the petitioner or the petitioner's licensed Architect, whichever is earlier, no further action on the basis of the impugned notice shall be taken by the Municipal Corporation. If the said order be adverse to the petitioner, no action shall be taken on the basis of the impugned notice for a period of 8 weeks from the date on which communication of the order is served to the petitioner or to her Architect, whichever is earlier;

(iv) We make it clear that in the event of rejection of regularization proposal on the failure of the petitioner to remove the G.I. Sheets fencing work within the aforesaid period of 8 weeks, it will be open for the Municipal Corporation to take action of removal without prejudice to its right of filing proceedings for the breach of undertaking;

(v) On the failure of the petitioner to make an application for regularization within a period of 8 weeks from today, the protection granted to the petitioner will come to an end;

(vi) We make it clear that we have not made any adjudication on the merits of the case;

(vii) The petitioner shall give intimation of filing of application for regularization within a period of one week from the date of filing to the third respondent. If permissible in law, it will be open for the third respondent to raise objection, if any, in writing to the proposal for regularization;

(viii) The petition is disposed of in above terms.

(SMT. VIBHA KANKANWADI, J.)

(A.S. OKA, J.)