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

WRIT PETITION NO. 3073 OF 2015

Meena Rohit Thakkar & Ors.

...Petitioners.

VS

State of Maharashtra & Ors.

...Respondents.

.....

Mrs Neeta Karnik for the Petitioners.

Mrs R.A.Salunkhe, AGP for the Respondent No.1.

Mr Atul G. Damle, Sr. Counsel a/w Mr Sandeep Aole, Mr Nishant Rana & Mr Vishesh Kalra i/b Vidhi Partners for the Respondent Nos. 2 and 3.

Mr Onkar Chandurkar i/b Ms Sapania Rachure for the Respondent No.4.

Mr Jayprakash K. Kapre for the Respondent Nos.5(A) and 5(B).

Mr Anil D'souza for the Respondent Nos.6 and 7.

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**CORAM : A.S.OKA &
RIYAZ I. CHAGLA, JJ.
MARCH 14, 2018.**

P.C. :

Heard the learned counsel for parties. The substantive prayer clause (a) in the Petition reads thus:-

“(a) This Hon'ble Court may invoke its writ jurisdiction under Article 226 of the Constitution of India and issue a writ of mandamus or a Writ direction or order in the nature of mandamus to-

(I) direct the Respondent Nos.2 and 3 to demolish and pull down the unauthorized construction carried out by the

Respondent Nos.4 to 7 upon the Survey No. 2387 situated in village Mauji Dhowli, Taluka Vasai, Thane.”

2 On 24th March, 2015, notice was issued to second to seventh respondents. On 12th June, 2015, after hearing the learned counsel appearing for second and third respondents as well as fourth respondent, this Court issued following directions:-

- “1.
2.
3. In the meanwhile, the third respondent or any other appropriate officer of the second respondent nominated by its Commissioner shall look into the grievances made in the petition. If the officer concerned finds that construction carried out by fourth to seventh respondents is illegal, appropriate steps for demolition shall be taken. It is obvious that no action shall be taken without giving an opportunity of being heard to fourth to seventh respondents and other affected persons, if any. Compliance affidavit shall be filed by the concerned Officer of the Municipal Corporation on or before 10th July, 2015.”

3 On 17th July, 2015, the time to file compliance affidavit by the Municipal Corporation was extended.

4 We may note here that the grievance in the Petition was as regards the failure of the second Respondent Municipal Corporation to take action of demolition on the basis of the notices which are annexed at Exhibits “H”, “I” and “J”. The order dated 4th August, 2015 which was passed after hearing the learned counsel appearing for the second and third respondents, the learned counsel for the fourth and fifth respondents as well as the learned counsel appearing for sixth and seventh respondents notes that the paragraph 3 of the order dated 12th June, 2015 has been misread by the Municipal Corporation. This observation is based on the statement made in the affidavit filed by the second and third respondents of Ms Smita Bhoir, Assistant Municipal Commissioner that a fresh notice has been issued to fourth Respondent on 20th July, 2015 making an allegation that the illegal construction of ground plus three floors has been made. Similarly, a fresh notice was issued to fifth respondent on 20th July, 2015, making an allegation that illegal construction of ground plus one floor has been made. Another notice of the same date was issued to sixth respondent making an allegation of illegal construction of ground and first floor. Lastly a notice was also issued to seventh respondent on

2nd July, 2015 making allegations of carrying out illegal construction. The same order of this Court also notes that a notice dated 2nd November, 2015 has been served to the first Petitioner making allegation of illegal construction. This Court directed an inquiry to be made by the Commissioner against erring employees. The Order dated 19th August, 2015 notes that, show cause notice has been issued to the erring Assistant Commissioner. There are further orders passed from time to time. The order dated 21st February, 2018 was passed by this Court making a note of the default on the part of the Municipal Corporation. The first paragraph of the order dated 21st February, 2018 reads thus:-

“(1) Perused the affidavit of Shri Govind J. Rathod, the Municipal Commissioner dated 17th August, 2015. Paragraph 5 of the said affidavit records that the Deputy Municipal Commissioner has been directed by him to look into further course of action pursuant to the fresh notice issued under sections 52, 53 and 54 of the Maharashtra Regional and Town Planning Act, 1966.”

5 Today, an affidavit is filed by Mr Ratesh Kini, Assistant Municipal Commissioner of the second respondent. The said affidavit shows that an application dated 27th July,

2015 made by the fourth respondent is still pending. No reasons whatsoever have been assigned as to why said application was kept pending. The Municipal Corporation could have always taken a decision on the said application, but that was not done. Notwithstanding all the aforesaid orders which were passed in the presence of the learned counsel for fourth respondent, the said respondent submitted a fresh regularization application to the Deputy Director of Town Planning of the second respondent on 6th March, 2018. Propriety required that the fourth respondent ought to have applied to this Court before making such an application. Prima-facie, it can be said that the officers kept application dated 27th July, 2015 pending for such a long time only with a view to facilitate the fourth Respondent to make an application for regularization under Section 52-A of the Maharashtra Regional and Town Planning Act, 1966 (“**MRTP Act**”) which was brought on the statute book in the year 2016. The application which ought to have been decided within the period of sixty days, has remained pending for more than 2 ½ years for which there is absolutely no explanation offered by any Municipal officer.

6 Today, it transpires that only the fourth respondent has made an application for regularization. As far as fifth respondent is concerned, the learned counsel appearing for the said respondent states that he is not concerned with the alleged illegal construction which is on the land bearing C.T.S. No.2387 of village Dhowli, Taluka Vasai, District Thane. As far as sixth and seventh respondents are concerned, their learned counsel states that they have not made an application for regularization but an application is being made by the said respondents.

7 In normal course, this Court would have initiated an action against the fourth respondent for the conduct which is reflected in the earlier part of this order. However, we find from the application for regularization, the fourth respondent has shown willingness to pay a sum of Rs.28,76,000/- to the second respondent-corporation. Secondly, a notice alleging that even the first Petitioner has carried out illegal construction has been already served. Therefore, we propose to direct that unless the aforesaid amount is deposited with the second respondent within a specified time, the Municipal Corporation will not consider the application and will proceed with the demolition.

All the orders passed by this Court from time to time and the affidavits filed by the second and third respondent will show that there is a neglect on the part of the second respondent to take an appropriate action against the illegal construction. On the contrary, after issuing notices way back in the year 2014, it appears that the Municipal Corporation has shown complete inaction. Therefore, it can be said that some of the Municipal Officers have ensured that the illegal structure was not touched. We, therefore, direct to the Commissioner of the Municipal Corporation to hold an inquiry into the conduct of the officers and ensure that an appropriate action is initiated against the erring officer.

8 Now that the fourth as well as the sixth and seventh respondents have accepted that the constructions which are the subject matters of the notices are illegal, we pass the following order:-

O R D E R

- (i) We direct the second respondent to decide the application dated 27th July, 2015 made by the

fourth respondent as well as an application dated 6th March, 2018 made by the fourth respondent as expeditiously as possible and in any event within a period of 60 days from 6th March, 2018. We make it clear that non-compliance with this direction will invite a contempt action under the Contempt of Courts Act, 1971;

- (ii) If the application for regularization dated 6th March, 2018 does not relate to any of the illegal constructions which are the subject matter of the notices issued by the second respondent-Municipal Corporation, an action of demolition shall be immediately initiated in respect of said constructions;
- (iii) In respect of the constructions which are the subject matter of the application dated 6th March, 2018, the action of demolition shall not be initiated till the date of communication of the order passed on the application for regularization, to the fourth respondent;
- (iv) Considering the peculiar facts of the case, it will be open for the Petitioners to submit objections in writing to the regularization application dated 6th March, 2018 within a period of two weeks from today;
- (v) We direct the fourth respondent to deposit a sum of Rs.28,76,000/- with the second respondent-

Municipal Corporation within a period of three weeks from today. The deposit will be subject to the result of the regularization application;

- (vi) Considering the conduct of the fourth respondent, we direct that on failure of the fourth respondent to deposit the amount within a period of three weeks from today, his both applications for regularization shall stand dismissed and that the Municipal Corporation shall proceed with the action of demolition;
- (vii) We direct the Municipal Commissioner to hold an inquiry into various aspects of defaults in discharge of the duties by the Municipal Officers which are reflected from this order as well as the orders passed earlier. He shall hold an inquiry into the conduct of the Municipal Officers and submit a report to this Court. In the report, the Municipal Commissioner to state the measures which he propose to take for ensuring that such defaults do not repeated;
- (viii) We also make it clear that, if there are notices issued against the Petitioners in respect of the illegal constructions carried out by them, even such notices shall be taken to its logical conclusion according to law;
- (ix) The Writ Petition is disposed of in the aforesaid directions;

(x) For reporting the compliance by the Municipal Commissioner and the Municipal Corporation, the Petition shall be listed on 22nd June, 2018. The compliance affidavit shall be filed within a period of one week before the next date.

(RIYAZ I. CHAGLA J.)

(A.S.OKA, J.)