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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2587 OF 2016**

Sant Nirankari Mandal	... Petitioner
Vs.	
State of Maharashtra and Ors.	... Respondents

WITH

CIVIL APPLICATION NO.227 OF 2017

Sant Nirankari Mandal	... Applicant
<u>In the matter between</u>	
Sant Nirankari Mandal	... Petitioner
Vs.	
State of Maharashtra and Ors.	... Respondents

WITH

CIVIL APPLICATION NO.226 OF 2017

Sant Nirankari Mandal	... Applicant
<u>In the matter between</u>	
Sant Nirankari Mandal	... Petitioner
Vs.	
State of Maharashtra and Ors.	... Respondents

WITH

CIVIL APPLICATION NO.1906 OF 2017

Mr. Bhagwan Dagadu Dhangar	... Applicant/ Intervenor
<u>In the matter between</u>	
Sant Nirankari Mandal	... Petitioner
Vs.	
State of Maharashtra and Ors.	... Respondents

WITH

CIVIL APPLICATION NO.2263 OF 2017

Smt. Vanita Chander Bablani & Ors.	... Applicants/ Intervenor
<u>In the matter between</u>	
Sant Nirankari Mandal	... Petitioner

Vs.
State of Maharashtra and Ors. ... Respondents

Mr. G.S. Godbole i/by Ms. Minal J. Chandanani for the Petitioner and for Applicant in CAW/226/2017 and CAW/227/2017.

Mr. Vinod N. Tayade for the Applicant in CAW/1906/2017.

Mr. Kishor K. Malpathak for the Applicant in CAW/2263/2017.

Mrs. R.A. Salunkhe, AGP for the Respondent Nos.1 to 3, 6 and 7.

Mr. Vijay D. Patil for the Respondent No.4.

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

DATE : 27th MARCH, 2018

P.C.

1 Heard the learned counsel appearing for the petitioner, the learned AGP for the first, second, third, fifth, sixth and seventh respondents and the learned counsel appearing for the fourth respondent. We have also heard the learned counsel appearing for the proposed intervenor.

2 The challenge in this Petition is to the notice dated 26th February, 2016 addressed by the Assistance Commissioner, Ward No.1 of the Ulhasnagar Municipal Corporation to the petitioner. It refers to a letter dated 1st February 2016 addressed by the same officer. The letter dated 1st February 2016 is addressed by the same officer to the Assistant Commissioner of Ward No.1 in which it is stated that the construction admeasuring 37.82 square meters has been regularised. By the said

letter, the Assistance Commissioner was informed that the Designated Officer has regularised construction of two rooms admeasuring 37.82 square meters and a sketch showing the said area is annexed to the said letter. A copy of the said letter and the sketch have been annexed as Annexure – 6 to the affidavit filed by Shri Nandlal Satramdas Samtani, Assistant Commissioner of the fourth respondent – Municipal Corporation. Now coming back to the impugned notice, the petitioner was informed to remove that part of the structure which is not regularised within a period of 24 hours. The petitioner was informed that if the structure is not removed within 24 hours, the fourth respondent – Municipal Corporation will demolish the same.

3 On 29th February 2016, this Court passed the following order :-

“ Not on board. Taken up on the board.

2. Heard the learned counsel for the petitioner, the learned AGP for the respondent Nos.1 to 3 and 5 to 7 and the learned counsel for the respondent No.4. Place the petition on the scheduled date i.e. 31st March 2016. We direct the fourth respondent to intimate the petitioner the description of the specific portion of the construction which is regularized. The communication be issued within a period of three weeks from today.

3. Till the next date, no action of demolition shall be taken on the basis of the notice dated 26th February 2016 (Exhibit 'N' to the petition).”

4 It is not in dispute that an application for regularisation was made by the petitioner by invoking the provisions of the Regularisation of Unauthorised Developments in the City of Ulhasnagar Act, 2006 (for short “the said Act of 2006”). Section 3 of the said Act of 2006 deals with regularisation of the unauthorised development as defined in clause (d) of Section 2. Ultimate decision on application for regularisation is required to be taken by the Designated Officer. Sub-Section (1) of Section 6 provides for an Appeal against the decision of the Designated Officer.

5 The learned counsel appearing for the petitioner argued that an Appeal under Section 6(1) of the said Act of 2006 will not be an efficacious remedy as reasons for not regularizing a part of the structure have not been communicated. Secondly, he submitted that there is no compliance with the order dated 29th February, 2016 and it is not informed to the petitioner precisely which part of the structure is not regularized. The learned counsel appearing for the fourth respondent relied upon the affidavit filed by Shri Nandlal Satramdas Samtani and Annexure – 6 thereto. We have already referred to Annexure – 6

thereto. He stated that sketch annexed to letter dated 1st February, 2016 specifies which area has been regularised.

6 Exhibit – K to the Petition is a communication dated 20th November, 2015 addressed by the Designated Officer under the said Act of 2006 to the petitioner. It records that the structure admeasuring 37.82 square meters has been regularized and therefore, the petitioner was called upon to deposit certain amounts as specified therein. It is stated that if the amounts were not deposited within 15 days, an action of demolition will be taken by the Ulhasnagar Municipal Corporation. The letter dated 27th November, 2015 and Annexure thereof which is marked as Exhibit – H (collectively) show that necessary amount was deposited by the petitioner.

7 Thus, the letter dated 20th November, 2015 constitutes communication of the decision taken by the Designated Officer to the petitioner.

8 There is a letter dated 27th October, 2016 annexed to the affidavit of Shri Nandlal Satramdas Samtani which is addressed by the Assistant Commissioner of the fourth respondent to the petitioner. It records that a part of the structure admeasuring 37.82 square meters

has been regularized. It is stated that an area of 210 square yards has not been regularized.

9 According to us, efficacious remedy of preferring an Appeal under Sub-Section (1) of Section 6 of the said Act of 2006 is available to the petitioner. The petitioner can always urge the grounds raised in this Petition before the Appellate Authority including the ground that reasons for not regularizing a part of the structure has not been recorded by the Designated Officer. To enable the petitioner to prefer an Appeal, a limited protection will have to be granted to him by continuing the ad-interim relief.

10 By filing Civil Application No.226 of 2017, the petitioner has contended that in breach of the ad-interim order dated 29th February, 2016 the compound wall of the petitioner has been partly demolished by the respondents. Therefore, a prayer is made for grant of permission to enclose partly demolished compound wall and gate by putting a new gate and steel sheets/ wire fencing. The learned counsel appearing for the petitioner submits that the petitioner is willing to give an undertaking that such work will be carried out by the petitioner without claiming any equity and the same will be subject to the decision of the Appellate Authority. We may note here that a contempt petition

was filed being Contempt Petition No.243 of 2017 by the petitioner alleging breach of the order dated 29th February 2016. The allegation was that the wall was demolished in breach of the order. By order dated 21st February 2017, this Court declined to entertain the Contempt Petition and the same was dismissed.

11 In fact, the perusal of the Contempt Petition No.243 of 2017 shows that prayer clause (b) in Civil Application No.226 of 2017 seeking permission to construct wall and gate was also made by way of prayer clause (a) in the Contempt Petition. As stated earlier, the Contempt Petition has not been entertained by this Court.

12 Therefore, we are not inclined to grant relief as prayed for in Civil Application No.226 of 2017. We, however, clarify that in the event the petitioner succeeds in Appeal and the Appellate Authority holds that even construction of wall deserves to be regularized, the applicant will be entitled to file appropriate proceedings before this Court seeking permission to reconstruct the said wall.

13 As the petition is being disposed of, it is not necessary for us to entertain the applications for intervention.

14 Accordingly, we pass the following order :-

ORDER

- (i) In view of availability of efficacious remedy under Sub-Section (1) of Section 6 of the said Act of 2006, we decline to entertain this Petition;
- (ii) It will be open for the petitioner to prefer an Appeal before the Appellate Authority within a period of four weeks from the date on which this order is uploaded;
- (iii) The Appellate Authority is bound to note that the present petition was filed on 29th February 2016 in which several orders were passed by this Court from time to time and the said petition remained pending in this Court till today;
- (iv) To enable the petitioner to prefer an Appeal and to seek appropriate interim relief in the Appeal, we direct that ad-interim relief granted on 29th February 2016 will continue to operate for a period of eight weeks from today;

- (v) Application for interim relief which may be made by the petitioner before the Appellate Authority shall be decided on its own merits uninfluenced by continuation of ad-interim relief by this Court;
- (vi) If the Appellate Authority holds that the petitioner was entitled to regularisation of the wall which has been demolished, it will be always open for the petitioner to file a fresh petition for seeking reconstruction of the wall;
- (vii) We make it clear that we have made no adjudication on the right claimed by the intervenor;
- (viii) The Petition is disposed of on above terms;
- (ix) All pending applications stand disposed of in view of disposal of the Petition.

(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)