

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2058 OF 2018

Mr.Amol Mhatre i/b Mr.Dilip B. Shinde for the
Petitioner
Ms R.A.Salunkhe, AGP for the respondent No.1
Mr.Akshay Kapadia i/b J. Shekhar & Co. for
respondent Nos.2 to 4.
Mr.Gautam J. Jain and Mr.Momin Mohd. Farooque Nisar
for respondent No.5

CORAM : A.S.OKA, &
RIYAZ.I.CHAGLA, JJ.
DATE : APRIL 3, 2018

1 Rule. The learned AGP waives service for the
first respondent. The learned counsel for the
second to fourth respondents waives service. The
learned counsel for the fifth respondent waives
service. Forthwith taken up for final disposal.

2 The prayer in this petition under Article 226 of the Constitution of India is for issuing a writ of Mandamus against the second to fourth respondents who are the Officers of the Bhiwandi Nizampur Municipal Corporation to take action of demolition on the basis of the notice dated 29th September 2017 issued under section 260 of the Maharashtra Municipal Corporations Act, 1949 (for short `the said

Act of 1949'). The fifth respondent has filed his affidavit dated 2nd April 2018.

3 We may note here that in the order dated 21st March 2018 passed by this Court, a statement of the learned counsel for the fifth respondent is recorded that the said respondent desires to apply for regularization. The order dated 21st March 2018 reads thus:

"The learned counsel appearing for the fifth respondent states that no further construction is being carried out. He states that the fifth respondent desires to apply for regularization of the subject construction and he is willing to give undertaking to demolish the construction in case his application for regularization is rejected. He states that such an undertaking will be filed within a period of one week from today. Place this petition high upon board on 2nd April 2018."

4 The affidavit tendered today of the fifth respondent is in terms of the said statement recorded in the aforesaid order.

5 The learned counsel for the fifth respondent states that on 26th March 2018, the fifth respondent has applied to the said Municipal Corporation for regularization of the subject structure.

6 The notice dated 29th September 2017 is in respect of R.C.C construction consisting of ground plus two floors. The notice refers that not only

that the construction is illegal but user thereof has been commenced. The very fact that the fifth respondent after service of the aforesaid notice has applied for regularization shows that he has accepted that the construction consisting of ground plus two floors is illegal. He has stated in the affidavit that he along with his family members are in possession of the structure and no one else is in possession. He has given an undertaking not to proceed with the construction and not to create third party interests. Moreover, the fifth respondent has given an undertaking that in the event the proposal for regularization is rejected, he shall remove the illegal construction carried out by him within a period of six weeks from the date of rejection of the application for regularization by the Municipal Corporation.

7 By accepting the undertakings of the fifth respondent, the petition can be disposed of. Accordingly, we pass the following order:

- (I) The undertakings in the affidavit of Shri Shri Arshad Abdul Rab Siddhiki-fifth respondent which is affirmed on 2nd April 2018 are accepted. The affidavit is taken on record and marked 'A-1' for identification;
- (II) We direct the Bhiwandi-Nizampur Municipal Corporation to decide the application for regularization made by the fifth respondent within a period of 60 days from the date on which the said application is filed. The

decision taken on the basis of the said application shall be communicated by the said Municipal Corporation to the Architect appointed by the fifth respondent;

(III) Till the date of communication of the order to the Architect appointed by the fifth respondent, action of demolition in respect of the said structure shall not be taken;

(IV) If the application for regularization is rejected, the action of demolition shall not be taken for a period of six weeks from the date on which the order is communicated to the Architect appointed by the fifth respondent only with a view to enable him to comply with the undertaking given by him in his affidavit to remove the entire illegal construction;

(V) If the fifth respondent fails to remove the illegal construction within the period of six weeks as aforesaid, the Municipal Corporation shall proceed to demolish the structure without issuing any further notice to the fifth respondent;

(VI) We make it clear that we have made no adjudication on the merits of the application for regularization;

(VII) All contentions on merits are kept open;

(VIII) Rule is made partly absolute on above terms.

(RIYAZ.I.CHAGLA,J.)

(A.S.OKA,J.)