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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3897 OF 2015

Shishir Durgadas Dhavle ...Petitioner
vs.
Kalyan-Dombivali Municipal
Corporation and others ...Respondents

Mr.Bhavesh Parmar i/b Mr.Devmani for the Petitioner
Mr.A.S.Rao for the respondent Nos.1 and 2
Mr.Dadhichi S. Mhaispurkar for respondent No.3

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

P.C.:

1 Heard the learned counsel appearing for the petitioner, the learned counsel for first and second respondents and the learned counsel for the third respondent. It is not in dispute that permission granted by the third respondent to cover the terrace of the building has expired on 21st February 2018. It is also not in dispute that the application for extension of permission has been made by the third respondent on 21st January 2018. The learned counsel for the first respondent on instructions states that said application will be decided within a period of two weeks from today.

2 The submission of the learned counsel for the petitioner is that the permission to cover the terrace was granted for a period of six months on temporary basis. His submission is that the third respondent has committed breach of the conditions on which the permissions were granted from time to

time. He further submitted that the permissions appeared to have been granted in exercise of discretionary powers by the Municipal Commissioner conferred upon him by sub clause (i) of clause 3 of Regulation 74 of the Development Control Regulation, 2004. He submitted that at highest, such permission could be granted for a maximum period of six months for protecting the structure from the rain only during the period of monsoon. He submitted that as iron columns have been used, the structure of the building has been adversely affected. Lastly, he submitted that the petitioner should be heard by the Municipal Corporation before taking a decision on the application dated 21st January 2018.

3 The learned counsel for the third respondent submitted that the Municipal Corporation has been granting permissions which have been regularly extended on expiry period of six months. He submitted that the third respondent has not removed the shed after expiry of period of six months as the application dated 21st January 2018 for renewal made by the third respondent is pending with the first respondent. He states that subject to right of the third respondent to challenge the order of rejection, if any, the said respondent is willing to give an undertaking to this Court that in the event his application is rejected, the third respondent will remove the shed on its own. He submitted that the structural auditor has advised the third respondent to cover the terrace with a view to

protect the structure of the building and therefore, even under section 265 of the Maharashtra Municipal Corporations Act, 1949, the third respondent is entitled to obtain a permission.

4 We have considered the submissions. We have perused the photographs on record. The photographs show that the terrace has been covered by asbestos sheets/iron sheets. However, on the sides, there is no covering. The petitioner himself is claiming to be an occupant of the ground floor of the building. The submission of the learned counsel for the third respondent is that in case of almost all the old buildings in the city, the terrace is covered in a similar manner with a view to avoid leakages and for protecting the structure.

5 Considering the fact that the application made by the third respondent is pending and considering the fact that the third respondent is willing to give an undertaking as recorded above, no directions are required to be issued in this petition. There cannot be any right of hearing in favour of the petitioner. Even if a regular application for grant of permission under section 45 of the Maharashtra Regional and Town Planning Act, 1966 is made, third party has no right of hearing. Admittedly, the petitioner is a member of the third respondent-society which is registered under the Maharashtra Co-operative Societies Act, 1960 (for short "the said Act of 1960"). If the third respondent takes any illegal action, as a member of the said society, the

petitioner has remedies available under the said Act of 1960 and therefore, at his instance the present writ petition under Article 226 of the Constitution of India cannot be entertained.

6 Hence, we pass the following order:

(I) We accept the statement made by the learned counsel for the first respondent that the application dated 21st January 2018 made by the third respondent shall be decided within a period of two weeks from today;

(II) The decision taken shall be communicated to the third respondent within a period of three weeks from today;

(III) We accept the statement made by the learned counsel for the third respondent on instructions regarding filing of an undertaking;

(IV) We grant time of three weeks from the date on which this order is uploaded for filing such an undertaking;

(V) A copy of the undertaking shall be served on the Advocate for the petitioner as well as the Advocate for the first and second respondents;

(VI) In the event, the third respondent fails to file an undertaking within stipulated time, we grant liberty to the petitioner as well as the first and second respondents to move the Court for appropriate directions;

(VII) It will be always open for the third respondent to make an application for grant of permission by

invoking section 265 of the said Act of 1949

(VIII) The petition is disposed of on above terms.

(RIYAZ.I.CHAGLA,J.)

(A.S.OKA,J.)