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

WRIT PETITION NO. 2475 OF 2018

Ravindra Kale & Ors.

... Petitioners

Versus

Pune Municipal Corporation & Anr.

... Respondents

Mr. S.M. Gorwadkar, Senior Advocate i/b Mr. Niranjan A. Mogre,
for the Petitioners.

Mr. Abhijit P. Kulkarni, for the Respondent No.1.

Mr. Nitin P. Deshpande, for the Respondent Nos. 2 and 3.

Mrs. R.A. Salunkhe, AGP for the Respondent No.4.

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

DATED: 6TH MARCH 2018.

PC:-

1. Heard learned counsel appearing for the parties.

Considering the narrow controversy involved in the Petition, the same is taken up for final disposal.

2. The learned Senior Counsel appearing for the Petitioners on instructions states that the Petitioners are confining this Petition only to two prayers. The first prayer is for setting aside the order dated 1st February 2018 passed by the State Government on an appeal preferred by the Petitioner under Section 47 of the Maharashtra Regional and Town Planning Act 1966 (for short "MRTP Act"). The second prayer which is pressed

is for directing the Pune Municipal Corporation (the first Respondent) to comply with the direction contained in clause (ix) of the paragraph 4 of order dated 28th June 2017. Clause (ix) reads thus:-

(ix) As the learned counsel appearing for the Municipal Corporation has stated that copies of the sanctioned plan are available, we direct the designated officer to visit the building in question and to ascertain whether any illegal construction is carried out in any other part of the building. If he finds that any such illegal construction has been carried out, the designated officer shall proceed in accordance with law for demolition of the illegal construction;

3. The learned Senior Counsel appearing for the Petitioners on instructions states that the Petitioners will file appropriate proceedings seeking the reconstruction of the demolished structure only if the appeal preferred by the Petitioners under Section 47 of the MRTP Act is allowed and the application for regularisation made by the Petitioners is granted. We accept the statement.

4. As regards the non-compliance with the aforesaid directions in clause (ix) is concerned, there is an Affidavit in Reply filed by Shri Rajesh Bankar, Executive Engineer, Building Development Department, Pune Municipal Corporation. In the Affidavit, it is

stated that as per the aforesaid directions, the Municipal Corporation has issued total 10 notices on 8th December 2017. Paragraph 13 of the said Affidavit refers to the said notices and even copies of the notices have been annexed to the Affidavit.

5. The learned counsel appearing for the Pune Municipal Corporation on instructions states that an appropriate decision will be taken on the said 10 notices in terms of the directions issued by a Division Bench of this Court in the case of ***Sopan Maruti Thopate & Anr. Vs. Pune Municipal Corporation***¹. He states that the entire action in terms of the directions issued in the said judgment will be concluded within a period of four weeks from today. We accept the said statement and hence, no further direction is required to be issued in this behalf.

6. The Petitioners have placed on record a true copy of the Appeal preferred by them before the State Government. The true copy of the Appeal along with annexures has been produced along with additional Affidavit of the Petitioners.

7. We have perused the prayers made in the said Appeal. Apart from other prayers which may not be maintainable, there is a specific prayer for challenging the order / communication issued

1 1996 (1) Mh L J 963.

by the Pune Municipal Corporation rejecting application for regularisation made by the Petitioners. At this stage, we may make a reference to Exhibit "AE" which is a communication dated 1st February 2018 by which dismissal of the Appeal was communicated to the Petitioners. The learned Senior Counsel appearing for the Petitioners states that the Petitioners were served with a copy of the said communication on 2nd March 2018. He pointed out that the said communication was despatched by the State Government on 24th February 2018.

8. Perusal of the said communication shows that the prayer made in the Appeal for setting aside the order rejecting application for regularisation has not been considered. It only records that the construction carried out by the Petitioners has been demolished by the Pune Municipal Corporation in exercise of the powers under Sub section 2 of Section 260 of the Maharashtra Municipal Corporations Act, 1949. Perusal of the said communication shows that the Petitioners were not heard before passing the said order. Therefore, the said order / communication is completely in breach of the principles of natural justice, and hence, the Appeal preferred by the Petitioners will have to be restored. If according to the State Government, the Appeal is not maintainable, the said issue will have to be decided only after giving an opportunity of being

heard to the Petitioners as well as the Planning Authority.

9. Accordingly, we dispose of the Petition by passing following order:-

(a) We accept the statements made by the learned Senior Counsel appearing for Petitioners on instructions which are recorded in paragraphs 2 and 3 above;

(b) We accept the statement made by the learned Counsel appearing for the Pune Municipal Corporation which are recorded in paragraph 4 above;

(c) The communication dated 1st February 2018 (Exhibit "AE") issued by the State Government is hereby quashed and set aside and the Appeal referred therein is restored to the file of State Government;

(d) We direct the Petitioners and the representative of the Pune Municipal Corporation to remain present in the office of the Appellate Authority on Monday 26th March 2018 at 3.00 p.m. for fixing the schedule of hearing;

(e) We direct the State Government to decide the Appeal as expeditiously as possible and in any event, within a period of two months from the date fixed for appearance;

(f) Needless to add that the Appeal shall be decided by passing a reasoned order;

(g) All contentions on merits of the Appeal including the issue of maintainability of the Appeal are kept open;

(h) In the event, the Appeal is allowed and the application for regularisation made by the Petitioners is also allowed, we permit the Petitioners to file appropriate proceedings seeking relief of reconstruction of the demolished structure.

(i) The Petition is disposed of in the above terms.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)