

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2576 OF 2018

Ganesh S. Shinde ... Petitioner.
V/s.
Authorised Officer, Encroachment
Division and ors. ... Respondents.

Mr. Dadhichi S. Mhaispurkar, Mr. Sameer Mangaonkar and Mr. N.G. Deshmukh for the Petitioner.
Mr. B.D. Joshi for Respondent No.1.
Mr.Y.S. Kochare, AGP for Respondent No.3.

CORAM : A.S. OKA AND M.S. SONAK, JJ.
DATE : 3rd OCTOBER 2018.

P.C.:

1] The learned counsel appearing for the petitioner, on instructions, states that the petitioner will apply for regularization of the structure, which is the subject matter of the notice dated 15th February 2018 (Exhibit-F to the petition). However, he invited our attention to the order dated 23rd March 2018 passed by the 2nd respondent. He submits that though the Notification dated 16th September 1982 is a final Notification, the impugned order records the same as a draft Notification. He pointed out that there are several other factual findings recorded which may come in the way of the petitioner.

2] We have considered the submissions. The Notification dated 16th September 1982 (Exhibit-A to the petition), on its plain reading, is a Notification under sub-section (4) of Section 4 of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971, which is a

Notification finally declaring the areas mentioned in the Schedule as “*Slum*”. To that extent, the observations made in the order dated 23rd March 2018 are not correct.

3] The learned counsel appearing for the petitioner, at this stage, submits that the Municipal Council has already decided not to regularize the structure. However, under section 52-A of the Maharashtra Regional and Town Planning Act, 1966, the petitioner can always apply for regularization. The order dated 23rd March 2018 records the reasons for passing the order of demolition. An occasion for filing of an application for regularization arises only because there is an order of demolition. Therefore, as and when the petitioner makes an application to the concerned authorities/competent authorities, they will have to decide whether the petitioner is entitled to regularization on its own merits and in accordance with law. Accordingly, we dispose of the petition by passing the following order:-

(a) It will be open for the petitioner to make an application for regularization of the structure which is the subject matter of this petition as per the relevant rules and in prescribed form, if any, within a maximum period of four weeks from today;

(b) If such application is made within stipulated period, the concerned authorities shall decide the same within a period of 60 days from the date of filing of the application;

(c) The order passed on the application shall be communicated to the petitioner;

(d) Till the date of communication of the order on the regularization application, the ad-interim relief granted on 27th February 2018 will continue to operate. If the application is rejected, the said ad-interim relief will continue to be operate for a period of two weeks from the date on which the order of rejection of the application is served upon on the petitioner;

(e) We make it clear that on the failure to make such application within the stipulated period, it will be open for the 1st and 2nd respondents to immediately take action of demolition;

(f) We make it clear that in view of what is observed earlier, all contentions of the petitioner on the application for regularization are kept open and the application same shall be decided in accordance with law;

(g) The petition is disposed of in the aforesaid terms.

(M. S. SONAK, J.)

(A.S.OKA, J.)