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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3571 OF 2007
WITH
CIVIL APPLICATION NO.1913 OF 2007

Rajan Dayal Pange

... Petitioner

Vs.

The Collector of Sindhudurg and Ors.

... Respondents

Mr. Narendra V. Walawalkar, Senior Advocate I/by Mr. G.H. Keluskar for
the Petitioner.

Mr. P.G. Sawant, AGP for the Respondent Nos.1, 2 and 4.

Mr. Amogh K. Karandikar I/by Khandeparkar & Co. for the Applicant and
the Respondent No.3.

CORAM : A.S.OKA AND
SANDEEP K. SHINDE, JJ.

DATE : 6th DECEMBER 2018.

ORAL JUDGMENT (Per A.S. Oka, J.)

1 When this petition was called out for final hearing in the last week, the learned senior counsel appearing for the petitioner pointed out that an appeal was preferred by the petitioner for challenging the order of the Tahsildar dated 27th March 2006 by which the application for regularisation of non-agricultural use made by the petitioner was rejected. The said appeal was dismissed by order dated 23rd May 2006. The learned senior counsel appearing for the petitioner has placed on record copies of

memorandum of appeal and condonation application therein filed by the petitioner on 5th December 2018 before the District Collector for challenging the order of the first appellate authority.

2 By this petition under Article 226 of the Constitution of India the petitioner is seeking a prayer to quash the notice/order dated 20th April 2007. A license was granted to the petitioner to run a hotel on the land subject matter of this petition. By the notice/order dated 20th April 2007, the petitioner was informed that on the failure of the petitioner to produce permission for non-agricultural use within 8 days, the license granted to the petitioner to run hotel would be cancelled.

3 The case of the petitioner is that a temporary permission for non-agricultural use of the subject land was granted to him on the basis of which non-agricultural user was commenced. The petitioner made an application for regularisation of non-agricultural use. The said application was rejected by a communication dated 31st January 2006. There was one more application for regularisation made by the petitioner which was rejected by a letter dated 5th May 2006. The petition discloses that on 26th December 2006, another application was made by the petitioner for grant of permission to use the said land for non-agricultural purposes. By a letter dated 9th January 2007 the said application was rejected. The contention of the petitioner is that similarly placed person has been granted non-agricultural permission.

4 The license granted to the petitioner to run hotel is sought to be cancelled only on the ground that there is no valid and subsisting permission granted under the provisions of the Maharashtra Land Revenue Code, 1966 to use the said land for non-agricultural purposes. Now, the issue whether the petitioner is entitled to permission for non-agricultural use of the land will be decided in the pending appeal. It cannot be disputed that use as a hotel is a non-agricultural use. The petitioner was protected by this Court by granting interim relief in terms of prayer clause (c) on 3rd May 2007. By the said interim relief, the impugned notice/order dated 20th April 2007 was stayed.

5 Considering the fact that the petitioner has taken recourse to the remedy under the said Code, it is not necessary to entertain the present petition. To enable the petitioner to move the second appellate authority for grant of appropriate interim relief, for a limited period, the interim relief can be extended.

6 Accordingly, we dispose of the petition by passing the following order :-

ORDER

- (i) It will be open for the petitioner to prosecute the second appeal and delay condonation application filed on 5th December 2018 before the District Collector of Sindhudurg District, the copies of which are taken on record and marked as 'A-1' and 'A-2' for identification;

- (ii) To enable the petitioner to apply to the second appellate authority for grant of appropriate interim relief, interim order passed on 3rd May 2007 will continue to operate for a period of three months from today;
- (iii) We make it clear that the appeal, the application for condonation of delay and the prayer for interim relief in the appeal will be decided on its own merits without being influenced by continuation of the interim order;
- (iv) We make it clear that we have made no adjudication on the merits of the controversy regarding entitlement of the petitioner to grant of permission for non-agricultural use;
- (v) The petition is disposed of on above terms;
- (vi) Rule is accordingly disposed of;
- (vii) Civil Application No.1913 of 2007 does not survive and the same is disposed of.

(SANDEEP K. SHINDE, J.)

(A.S.OKA, J.)