

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3871 OF 2018

Uma Bhimsen Dua
Since deceased through legal heirs ..Petitioner.

Versus

State of Maharashtra & Others. ..Respondents.

Mr. Sandesh D. Patil i/b Mr. P. S. Patil for the Petitioner.

Ms. Nisha Mehra, AGP for the Respondent-State.

Mr. N. P. Deshpande for Respondent No. 2.

Coram : Ranjit More &
Smt. S. S. Jadhav, JJ.

Date : **April 12, 2018.**

P. C. :

1. Mr. Patil, learned Counsel for the Petitioner at the outset seeks leave to amend the petition. Since the amendment is necessitated by the event subsequent to the filing of writ petition, we grant leave to amend in terms of the draft amendment tendered across the bar. Necessary amendment be carried out forthwith.

2. Heard. By this petition the Petitioner is challenging the notice dated 20th March 2018 issued by Deputy Engineer of the Pimpri Chinchwad New Township Development Authority-Respondent No.2 herein. By the said notice, the Petitioner is directed to remove the notice construction situated on Survey No. 5/4, Mouje Thergaon. Earlier the Petitioner was served with notice under section 53 of the the Maharashtra Regional and Town Planning Act, 1966 and those proceedings went up to the Apex Court. However, the Petitioner did not succeed in the same. After conclusion of the Apex Court

proceedings, the impugned notice is issued.

3. The petition was placed before this Court for admission on 28th March 2018. During the course of hearing, a statement was made by Mr. Patil, learned Counsel for the Petitioner that on 23rd March 2018, the Petitioner has made a proposal for regularisation of the offending structure. We accordingly directed Respondent No.2 to decide the said proposal of the Petitioner. We also protected the subject offending structure by granting order of status quo during the pendency and till the disposal of Petitioner's regularisation proposal.

4. During the pendency of this petition, the Chief Executive Officer of Respondent No.2 has decided the said proposal of the Petitioner on 11th April 2018 and has rejected the same. The grievance of the Petitioner is that his proposal for regularisation of the offending structure [being proposal dated 23rd March 2018] is dismissed ex-parte and without giving an opportunity of hearing to the Petitioner and that too on technical grounds.

5. Mr. Patil, learned Counsel for the Petitioner submitted that the order dated 11th April 2018 made by Respondent No.2 rejecting the Petitioner's proposal for regularisation may be set aside and the Chief Officer of Respondent No.2 may be directed to dispose of the same proposal afresh after giving an opportunity of hearing to the Petitioner. Since the said order is passed without following principles of natural justice, we are inclined to set aside the said order and direct the Chief officer of Respondent No.2 to decide it afresh after affording an opportunity of hearing to the Petitioner.

6. In the light of above discussion, we dispose of this petition by passing following order :

-: O R D E R :-

- [1] The order dated 11th April 2018 passed by the Chief Officer of Respondent No.2 rejecting the Petitioner's proposal for regularisation of the offending structure, being proposal dated 23rd March 2018, is quashed and set aside and the matter is remanded back to the Chief Officer of Respondent No.2.
- [2] The Chief Officer of Respondent No.2 shall hear the Petitioner and thereafter decide the proposal dated 23rd March 2018 independently, on its own merits and in accordance with law.
- [3] It is clarified that this Court has not gone into merits of the the Petitioner's claim, and this order shall not be constructed expression of any opinion on the merits of the matter.
- [4] The chief Officer of Respondent No.2 shall pass fresh speaking order on the Petitioner's proposal dated 23rd March 2018. The whole exercise shall be completed as expeditiously as possible and at any rate within the period of six weeks from the date of receipt of a copy of this order.
- [5] In order to enable the Chief Officer to comply with this order, the Petitioner shall remain present before the Chief Officer along with a copy of this order on 25th April 2018 at 11.00 a.m.

[6] During the pendency and till the disposal of said proposal of the Petitioner [being proposal dated 23rd March 2018], both parties, i.e., the Petitioner and the Respondents shall maintain status quo as of today regarding the subject offending structure. In the event the order on the said proposal be adverse to the interest of Petitioner, the same shall not be given effect to for the period of two weeks from the date of communication thereof to the Petitioner.

[Smt. S. S. JADHAV, J.]

[RANJIT MORE, J.]