

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4163 OF 2018

Rekha Pandhrinath Shimpi. ... Petitioner.
V/s.
The State of Maharashtra and others. ... Respondents.

Mr.Shashank C. Mangle for the petitioner.
Ms.Nisha Mehra, AGP for respondent No.1.
Ms.Sairuchita Chowdhary i/b. J.Shekhar & Co. for respondent No.2.
Mr.B.B.Sharma for respondent No.3.

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

DATE : 28th June 2018.

P.C.:

Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the second respondent, the learned counsel appearing for the third respondent and the learned AGP for the first respondent.

2. By this petition under Article 226 of the Constitution of India, the challenge is to the notices issued by the second respondent- Municipal Corporation as well as by the third respondent for demolition of the structure/ building constructed by the petitioner. On 6th June 2018, an undertaking has been tendered by the petitioner. We may note here that the order dated 3rd May 2018 records that the officer of the second

respondent- Municipal Corporation shall identify the illegal part of the structure described in the notice dated 23rd March 2018 in presence of the petitioner. The affidavit/ undertaking dated 6th June 2018 records that measurements were carried out in terms of the order dated 3rd May 2018 and a plan has been served upon the petitioner wherein the illegal and unauthorized area has been demarcated. A copy of the said plan has been annexed to the said affidavit/ undertaking. There is an undertaking incorporated to apply for regularization.

3. The said undertaking is marked as “U-1” for identification. In paragraph-45 of the said undertaking, the petitioner has stated thus:

“4.I undertake that in case the structure bearing no.N-42/J/A-1/02/02, CIDCO, New Nashik 9, which is partly illegal and unauthorized, is not regularized by the Respondents; in that case I will remove and demolish illegal and unauthorized part of the said structure on my own and at my cost.”

4. There is no dispute between the second and the third respondents that now the second respondent is the planning authority for the said area and, therefore, is competent to entertain and consider the application for regularization which may be made by the petitioner.

5. It is already recorded in the earlier order that the petitioner has accepted the subject structure to be illegal and, therefore, she has shown her willingness to apply for regularization.

6. Accordingly, we pass the following order:

- (i) The undertaking of the petitioner taken order record and marked “U-1” for identification is accepted;
- (ii) It will be open for the petitioner to make an application for regularization to the second respondent- Municipal Corporation in a prescribed form and by a prescribed mode through an Architect within a period of six weeks from today;
- (iii) If such an application is made, the second respondent- Municipal Corporation shall decide the same within the period of sixty days from the date of filing of the application. The order passed on the said application shall be communicated to the petitioner's Architect;
- (iv) Till the communication of the order passed by the Municipal Corporation to the petitioner's Architect, an action of demolition shall not be taken in respect of the illegal structure which is shown on the plan annexed to the undertaking marked as “U-1”. If the application for regularization is rejected, the petitioner shall remove the illegal structure at her own cost within a period of six weeks from the date on which the order is communicated to the petitioner's Architect. To enable

the petitioner to do so, the action of demolition shall not be taken for a period of six weeks from the date on which the order is served on the petitioner's Architect;

- (v) If on expiry of the period of six weeks as aforesaid, the petitioner fails to comply with the undertaking, without prejudice to the right of taking a recourse to the other remedies, the second respondent shall demolish the illegal structure without any further notice to the petitioner;
- (vi) We make it clear that on the failure of the petitioner to apply for regularization in the above terms within the period of six weeks from today, the second respondent shall take action of demolition in respect of the subject structure;
- (vii) Writ petition is disposed of on the above terms.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)