

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5857 OF 2018

Ashfaq Razak Shaikh and another. ... Petitioners.
V/s.
Deputy Director, Town Planning,
Nashik Municipal Corporation and others. ... Respondents.

Mr.Sandip Shinde i/b. Mr.Sujeet Deshmukh for the petitioners.
Mr.Vaibhav P. Patankar for respondent Nos.1 and 2.
Mrs.R.A.Salunkhe, AGP for respondent No.3.

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

DATE : 6th June 2018.

P.C.:

Heard the learned counsel for the petitioners. The challenge in this petition under Article 226 of the Constitution of India is to the notice of demolition issued by the second respondent- Corporation under section 260 read with section 478 of the Maharashtra Municipal Corporations Act, 1949 (for short “the said Act of 1949”). The learned counsel appearing for the petitioners has tendered an Undertaking of the petitioners. The petitioners have undertaken to apply for regularization within two weeks from today. The very fact that the petitioners have agreed to apply for regularization shows that they have accepted that the subject structure is illegal and unauthorized. Only in the light of

undertaking of the petitioners that a limited protection deserves to be granted in favour of the petitioners.

2. The learned counsel appearing for the petitioners states that the second respondent accepts application for regularization/ grant of development permission only by online mode. He, however, states that due to technical reasons, some times, the system is unable to accept the applications. He, therefore, states that in such a contingency, the petitioners may be permitted to apply in a physical form. This request is reasonable.

3. Accordingly, we dispose of this petition by passing the following order:

- (i) The undertaking of the petitioners is taken on record and marked "U-1" for identification;
- (ii) It will be open for the petitioners to apply for regularization of the subject structure to the second respondent within a period of two weeks from today. If the application by online mode cannot be accepted for technical reasons, it will be open for the petitioners to make the application in a physical form along with requisite documents within a period of two weeks from today along with an affidavit stating that the application by online mode is not being accepted. Such an

application, if filed, shall be decided by the second respondent within a period of sixty days from the date of filing of the application;

- (iii) The order passed on the regularization application shall be immediately communicated to the petitioners. Till the date of communication of the order passed on the application for regularization, the action of demolition shall not be taken on the basis of the impugned notice;
- (iv) If the application is rejected, the action of demolition shall not be taken for thirty days from the date of communication of the order to the petitioners to enable the petitioners to prefer an appeal under section 47 of the Maharashtra Regional and Town Planning Act, 1966;
- (v) In the event the petitioners fail to apply for regularization within a period of two weeks from today or in the event the petitioners fail to prefer an appeal as aforesaid within the stipulated period of thirty days, the protection granted to the petitioners shall cease to operate and it will be open for the respondents to demolish the subject structure without any further notice;
- (vi) If the appeal preferred by the petitioners is dismissed and if the petitioners fail to demolish the structure within a

period of thirty days from the date of service of the order of the Appellate Authority upon them, apart from taking recourse to the other remedies the respondents shall immediately proceed to demolish the subject structure without any further notice to the petitioners;

- (vii) We make it clear that we have made no adjudication on the merits of the regularization application proposed to be made by the petitioners;
- (viii) We further make it clear that this order shall not be construed to mean that the petitioners have been authorized to carry on business in the subject structure which is otherwise not permissible in law;
- (ix) Writ petition is disposed of on the above terms.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)