

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3573 OF 2018
ALONGWITH
CIVIL APPLICATION NO.938 OF 2018

Sandip Jani & Ors.

..Petitioners.

v.

Municipal Corporation of City of Pune & Ors.

..Respondents.

Mr.Drupad S. Patil for the Petitioner/Applicant.

Mr.Rajdeep S. Khadapkar for respondent Nos.1 and 2.

Mr.R.V.Govilkar alongwith Ms.Shaba N.Khan i/by Govilkar and Associates for respondent No.3.

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

DATE : 25th APRIL, 2018

P.C.

. Not on board. Taken on board.

1 Submissions of the learned counsel appearing for the parties were heard on 24th April 2018.

2 On 5th January 2013, the first respondent- Municipal Corporation issued a notice to the Petitioners under sub-section (1) of Section 268 of the Maharashtra Municipal Corporations Act, 1949 (for short “the said Act of 1949). The said notice records that as neither occupancy certificate nor completion certificate was granted, the Petitioners were not entitled to occupy the premises in the subject building and

therefore, they were called upon to immediately stop the user of the subject premises.

3 It appears that in Special Civil Suit No.151 of 2012 filed by the 3rd respondent, the first Petitioner made an application for temporary injunction seeking a restraint order against the first respondent-Municipal Corporation restraining the said Corporation from acting on the basis of the said notice dated 5th January 2013.

4 The learned Trial Judge granted temporary injunction by his order dated 24th January 2013 which had the effect of restraining the first respondent from acting upon the said notice dated 5th January 2013. It appears that against the said order, the third respondent herein preferred an Appeal from Order in which Civil Application No.668 of 2014 was made for grant of stay to the operation of the said order dated 24th January 2013. In paragraph 10 of the order passed by the Learned Single Judge on 11th August 2014, he observed thus :

“Heard the learned counsel for the parties at length. Admittedly, in the present proceedings, the order passed by the trial court below Exhibit 5 in Special Civil Suit No.151/2012 dated 27/06/2012 has been confirmed in Appeal from Order No.1031/2012. In that order the Respondent Municipal Corporation was directed to withhold the allotment of completion certificate to Respondent No.1 in respect of the building on the suit land. Without obtaining completion certificate, Respondent No.1 started using suit premises. Hence, the corporation issued notice under section 268(1) of the BPMC Act. It is an admitted fact that no one can occupy the suit premises without obtaining completion certificate from Corporation. In view of these facts, I am of the opinion that the Applicant has made out a case for allowing the Civil Application and it is allowed in terms of prayer clause (a) which reads thus :

“(a) Pending the hearing and final disposal of the present appeal, the operation or the order dated 24.1.2013 below Exhibit 113 in Special Civil Suit No.151/2012 before the 6th Jt. Civil Judge, Senior Division Pune be stayed.”

(Underline supplied)

5 The first Petitioner preferred a Special Leave Petition before the Apex Court for challenging the aforesaid order. The said Petition for Special Leave to Appeal No(s).13787-13788/2014 was dismissed by order dated 1st September 2014 on the ground of delay as well as on merits.

6 Now, the contention raised in this Petition is that there is a policy adopted by the first respondent to regularise/tolerate occupation of a premises without obtaining occupation certificate and the Petitioners have accordingly made an application for regularisation.

7 On 9th March 2018, a notice was issued to the Petitioners calling upon them to act upon the notice dated 5th January 2013. It is this notice dated 19th March 2018 which is the subject matter of challenge in this Petition.

8 The statement of the learned counsel appearing for the Petitioners is that the application made by the Petitioners on 12th March 2018 for regularisation is pending. He submitted that in view of the policy of the first respondent Municipal Corporation permitting regularization of such user, without deciding the application dated 12th March 2018, the impugned notice dated 9th March 2018 could not have been issued. His submission is that the notice dated 5th January 2013 cannot be implemented as there is an injunction granted in the proceeding filed by the third respondent restraining the first

respondent from granting completion certificate.

9 We have considered the submissions. As noted earlier, on 24th January 2013, the Trial Court on an application made by the present first Petitioner, granted temporary injunction restraining the first respondent from acting upon the said notice dated 5th January 2013. After hearing the Petitioners, by the order dated 11th August 2014, the learned single Judge stayed the order of the Trial Court dated 24th January 2013 for the reasons recorded in paragraph 10 of his order which we have reproduced earlier.

10 The order of the learned Single Judge has been confirmed by the Apex Court on merits as well as on the ground of delay on 1st September 2014. Hence, the notice dated 5th January 2013 is operative and is in force. The notice impugned in this Petition under Article 226 of the Constitution of India is dated 9th March 2018. The impugned notice is not an independent notice. It merely calls upon the Petitioners to comply with the notice dated 5th January 2013.

11 Even assuming that there is a policy as stated by the learned counsel appearing for the Petitioners, grant of interim relief restraining the Municipal Corporation from acting upon the notice dated 9th March 2018 will amount to restraining the first respondent Municipal Corporation from acting upon the notice dated 5th January 2013. In the face of order dated 11th August 2014 passed by the learned single Judge which has become final, as on today, we cannot grant any relief which restrains the first respondent from acting upon the notice dated 5th January 2013. In view of the order of the Learned Single Judge referred above, no such prohibitory relief can be granted in

respect of the notice dated 5th January 2013. Therefore, the challenge to the notice dated 9th March 2018 has no merit as it only seeks to implement the notice dated 5th January 2013. As regards the prayer for the regularization, the Municipal Corporation can be directed to decide the same at the earliest.

12 We make it clear that we have not made any adjudication on merits of the Appeal which is pending, wherein the challenge is to the order dated 24th January 2013 passed by the Trial Court. We are informed that now the said Appeal has been transferred to the District court and the same is pending before the District Court. Accordingly we pass the following order :

ORDER

- 1 Prayer clauses (a) and (b) are rejected;
- 2 We direct the first and second respondent to decide the application dated 12th March 2018 as expeditiously as possible and in any event within a period of one month from today;
- 3 A copy of the order passed on that application shall be immediately provided to the Petitioner;
- 4 The Petition is accordingly disposed of.

(RIYAZ .I.CHAGLA, J)

(A.S. OKA, J)