

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5420 OF 2018

Akiloddin Rahimiddin Shaikh and others. ... Petitioners.

V/s.

Deputy Director, Town Planning, Nashik
Municipal Corporation and others. ... Respondents.

Mr.Sandip Shinde i/b. i/b. Ms.Kavita Totkekar 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.

PC.:

Heard the learned counsel for the petitioners and the learned counsel appearing for the first and second respondents. The learned AGP appears for the third respondent- State. The first petitioner for himself and on behalf of the second petitioner has already filed Undertaking dated 3rd May 2018. In the said Undertaking, the said petitioners have undertaken to file regularization application in respect of structures mentioned in the impugned notice. They have also undertaken to the Court to dismantle the said structures, if the regularization application is rejected by the respondents subject to the right of the petitioners to file an appeal against the said order.

2. Today, the learned counsel appearing for the petitioners has tendered another Undertaking signed by all the three petitioners to similar effect. In addition, the petitioners have stated that they will immediately demolish the second structure mentioned in the impugned notice which is being used as a Kitchen. The said Undertaking is taken on record and marked "X" for identification. We accept the undertakings of the petitioners mentioned therein.

4. The learned counsel appearing for the petitioners pointed out that the Municipal Corporation is accepting the applications for regularization/ grant of building permission only by online mode. He has stated that due to overload of the system, online applications could not be accepted by the respondents. He, therefore, submits that if online application cannot be accepted, the petitioners may be permitted to file an application in a physical form. The said request is reasonable.

5. The very fact that the petitioners have undertaken to file regularization application shows that the structures mentioned in the impugned notice are illegal and unauthorized.

6. Only in the light of undertakings that we propose to grant limited protection to the petitioners. Accordingly, we dispose of this petition by passing the following order:

- (i) It will be open for the petitioners to file an application for regularization of the first structure mentioned in the

impugned notice to the second respondent- Municipal Corporation 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. The respondents shall accept such application, if filed within two weeks from today;

- (ii) The application which will be made by the petitioners shall be considered on merits only if the petitioners before making the said application completely demolish and dismantle the second structure mentioned in the impugned notice. If the said second structure is not demolished, the respondents will be entitled to reject the application;
- (iii) If compliance is made by the petitioners, the application for regularization shall be decided by the respondents within a period of sixty days from the date of filing of the application;
- (iv) The order passed on the regularization application shall be 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;

- (v) If the application is rejected, the action of demolition shall not be taken for a period thirty days from the date of communication of the order to the petitioners to enable the petitioners to file an appeal under section 47 of the Maharashtra Regional and Town Planning Act, 1966;
- (vi) If the petitioners fail to apply for regularization within a period of two weeks from today, the protection granted to the petitioners shall cease to operate and it will be open for the respondents to demolish the subject structure;
- (vii) If the application for regularization is rejected and no appeal is preferred by the petitioners within a period of thirty days from the date of communication of the order to them, it will be open for the respondents to demolish the subject structure;
- (viii) 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, the respondents shall be entitled to demolish the structure without further notice to the petitioners;

- (ix) We make it clear that we have made no adjudication on the merits of the regularization application proposed to be made by the petitioners;
- (x) 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;
- (xi) Writ petition is disposed of on the above terms.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)