

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5675 OF 2017

Shri Baldev Chimandas Tejawani. ... Petitioner.
V/s.
The State of Maharashtra and another. ... Respondents.

Mr.Sauresh D. Butala for the petitioner.
Ms.Nisha Mehra, AGP for respondent No.1.
Mr.Nikhil Chavan for respondent No.2.

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

DATE : 20th June 2018.

P.C.:

This petition was heard on the last date for sometime. The petitioner by this petition under Article 226 of the Constitution of India seeks protection to his structure in which he is running a Bar and Restaurant from demolition by the second respondent. According to the case of the petitioner, his mother purchased a plot of land on which the subject structure has been constructed.

2. Today, a joint undertaking on oath dated 18th June 2018 is tendered on record which is executed by the petitioner- Mr.Baldev Chimandas Tejawani, Mr.Prakash Chimandas Tejawani, Mrs.Maya Ashok Thakur, Mrs.Kiran Suresh Katwani, Mrs.Heena Baldev Tejawani. In paragraph-1 of the undertaking, it is stated that the property was owned by late Mrs.Ramidevi Chimandas Tejawani (petitioner's mother), the

petitioner and Mrs.Hina Baldev Tejawani. In paragraphs-2 and 3 of the undertaking they have stated thus:

2. Late Mrs.Ramidevi Chimandas Tejawani expired in the year 2012 leaving behind 1. Mr.Baldev Chimandas Tejawani, 2. Mr.Prakash Chimandas Tejawani, 3. Mrs.Maya Ashok Thakur, 4. Mrs.Kiran Suresh Katwani, being her only true legal heirs.

3. The subject property is allotted exclusively to Mr.Baldev Chimandas Tejawani and the same is in his possession.

3. In view of the statements made in the undertaking on oath, it is apparent that the petitioners have accepted that the structure subject matter of this petition has been constructed without obtaining the permission of the competent authority as the petitioner has agreed to apply for regularization.

4. In view of the undertaking, a limited protection will have to be granted to the petitioner. Accordingly, we dispose of the petition by passing the following order:

(i) The joint undertaking on oath of the petitioner and others is taken on record and marked "U-1" for identification. The undertakings given therein are accepted;

(ii) It will be open for the petitioner to apply for regularization of the structure subject matter of this

petition within a period of one month from today. The application shall be made through a licensed Architect in the prescribed form and by the prescribed mode;

- (iii) If such an application is made, the second respondent shall dispose of the same within a period of sixty days from the date of filing of the application. The order passed on the regularization application shall be communicated to the petitioner's Architect. Till the communication of the order, an action of demolition shall not be taken;
- (iv) If the order be adverse to the petitioner, the action of demolition shall not be taken in respect of the subject structure for a period of thirty days from the date of communication of the order to the petitioner's Architect so as to enable the petitioner to prefer an appeal before the Appellate Authority;
- (v) If the appeal is preferred within a stipulated period of thirty days and the same is dismissed, an action of demolition shall not be taken for a period of one month from the date of communication of the order of the Appellate Authority to the petitioner, to enable the petitioner to comply with the undertaking;

- (vi) If the petitioner fails to comply with the undertaking within the stipulated period of one month from the date of communication of the order of the Appellate Authority, it will be open for the second respondent to demolish the subject structure without any further notice to the petitioner or any other person;
- (vii) We make it clear that we have not made any adjudication on the regularization application proposed to be made by the petitioner;
- (viii) Writ petition is disposed of on the above terms.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)