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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6447 OF 2018

Jayantilal Hastimalji Jain	...Petitioner
vs.	
Mumbai Municipal Corporation	
and others	...Respondents

Mr.Pradeep J. Thorat for the Petitioner
Mr.Pradeep M. Patil for the respondent Nos.1 to 4.
Mr.Prashant More, AGP for respondent No.6.

CORAM : A.S.OKA, &
RIYAZ.I.CHAGLA, JJ.
DATE : JUNE 26, 2018

P.C.:

1 By order dated 18th June 2018, the parties were put to notice that the petition will be finally heard.

2 on 23rd February 2013, a notice under sub-section 1 of section 53 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'MRTP Act') was issued to the petitioner by the first respondent-Municipal Corporation. As per the order dated 14th July 2015 passed in Public Interest Litigation No.11 of 2013, the present petitioners were permitted to apply for regularization under sub-section 3 of section 53 of the MRTP Act in respect of the construction subject matter of the said notice dated 23rd February 2013. The

application for regularization made by the petitioner was rejected by the first respondent. Being aggrieved by the order of rejection, the petitioner preferred an appeal under section 47 of the MRTTP Act before the State Government. By the impugned order dated 1st March 2017, the Hon'ble Minister of State for Urban Development dismissed the appeal.

3 With the assistance of the learned counsel for the parties, we have perused the impugned Judgment and order. In paragraph 8 of the Judgment and order, there is "discussion and conclusions". Clauses (a) and (b) of paragraph 8 only reproduce facts. In clause (c), the Hon'ble Minister has referred to the notice dated 23rd February 2016 and the contents thereof. He has observed that the details/particulars of the illegal construction have not been mentioned in the notice. He has observed that the Municipal Corporation has not bothered to check its own record or the record of the Mumbai Repairs and Reconstruction Board, Mumbai. Clause (d) of paragraph 8 merely records that there is no merit in the appeal. Thus, the Appellate Authority has not even considered the merits or demerits of the order passed by the first respondent rejecting the application for regularization. The very fact that the petitioner has taken recourse to sub-section 3 of section 53 of MRTTP Act shows that the petitioner has accepted the correctness of the notice dated 23rd February 2016. While deciding the Appeal

against the order refusing to allow regularization, the Appellate Authority had no jurisdiction to go into the question of correctness or otherwise of the notice dated 23rd February 2016. Hearing and consideration ought to have confined to the merits and demerits of the order dated 4th June 2016 which was impugned in this petition. We find that there is complete non application of mind by the Appellate Authority and therefore, the impugned order cannot be sustained and deserves to be quashed and set aside.

4 Accordingly, we pass the following order:

(I) Impugned order dated 1st March 2017 (Exhibit-R) passed by the Appellate Authority is hereby quashed and set aside and the Appeal preferred by the petitioner a copy of which is annexed as Exhibit-Q to the petition is restored to file of the Appellate Authority;

(II) We direct the petitioner to appear in the office of the Appellate Authority on 17th July 2018 at 3.00 p.m for fixing the date of hearing;

(III) The Appellate Authority shall decide the Appeal afresh in the light of the observations made in this Judgment as expeditiously as possible and preferably within a period of three months from the date fixed for appearance;

(IV) The order passed by the Appellate Authority shall be communicated to the petitioner. Till the date of communication of the said order and for a

period of four weeks from the date of communication of the said order, the protection granted by the learned Single Judge in terms of paragraph 4 of the order dated 23rd April 2018 in Appeal from Order No.220 of 2018 shall continue to operate;

(V)We make it clear that we have made no adjudication on the merits of the Appeal and all contentions of the parties are left open;

(VI)Writ petition is disposed of.

(RIYAZ.I.CHAGLA,J.)

(A.S.OKA,J.)