

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5855 OF 2018

Late Vishwanath Hari Mate
(Deceased) through Legal Heirs
Smt.Tarabai Vishwanath Mate and others. ... Petitioners.

V/s.
The Municipal Commissioner,
Nashik Municipal Corporation and others. ... Respondents.

Ms.Neelam W. Bakshi for the petitioners.
Mr.Shekhar Jagtap with Ms.Sairuchita Chowdhary
i/b. J.Shekhar & Co. for respondent Nos.1 and 2.
Mr.Sachin Gite for respondent No.3.

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

DATE : 19th July 2018.

P.C.:

Heard the learned counsel appearing for the petitioners, the learned counsel appearing for the first and second respondents and the learned counsel appearing for the third respondent.

2. The learned counsel appearing for the petitioners states that the petitioners desire to apply for regularization of the structure subject matter of the impugned notice and the petitioners are willing to give an undertaking stating that in the event application for regularization/compounding of the subject structure is rejected, they will demolish the structure within a period of eight weeks from the date of communication of the order of rejection to the petitioners. She further states that the

third petitioner has affirmed an undertaking which is taken on record and marked “U-1” for identification. She states that the remaining petitioners will also file similar undertakings. The learned counsel appearing for the third respondent submits that the petitioners have no title and, in fact, a suit for specific performance filed by the petitioners is pending. He submits that the third respondent may be heard by the Municipal Corporation before dealing with the application for regularization which may be made by the petitioners.

3. As far as contention raised by the third respondent is concerned, there is no question of giving any opportunity of being heard to the third respondent while Municipal Corporation decides the application for regularization. However, the third respondent can file written objections which shall be taken into consideration by the concerned authority of the Municipal Corporation.

4. Hence, we dispose of this writ petition by passing the following order:

- (i) The undertaking of the third petitioner taken on record and marked as “U-1” for identification is accepted. We accept the statement made by the learned counsel for the petitioners that the remaining two petitioners will also file similar undertakings. We grant time of two weeks to other two petitioners to file similar undertakings. The time of two weeks will be from the date this order is uploaded on the server;

- (ii) It will be open for the petitioners to apply for regularization of the subject structure within a period of one month from today. If such an application for regularization is made within the stipulated period, the same shall be decided within a period of sixty days from the date of filing of the application. The application shall be filed in a prescribed format and by a prescribed mode through an Architect;
- (iii) The decision taken on the application for regularization shall be communicated by the Nashik Municipal Corporation to the petitioners' Architect. Till the date of communication of the order to the petitioners' Architect, an action of demolition of the subject structure shall not be taken on the basis of the impugned notice;
- (iv) If the application for regularization is rejected, the action of demolition shall not be taken for a period of eight weeks from the date on which the order of rejection is served to the petitioners' Architect to enable the petitioners to comply with the undertakings and to remove themselves from the subject structure. If the petitioners fail to comply with the undertakings given by them within the stipulated period of eight weeks, apart from other remedies which will be available, it

will be open for the Municipal Corporation to demolish the subject structure without any further notice to the petitioners;

- (v) We make it clear that on the failure of the petitioners to apply for regularization within the stipulated period of one month from today, it will be open for the Municipal Corporation to demolish the subject structure. We also make it clear that on the failure of the other two petitioners to file undertakings within the stipulated period of two weeks from the date on which this order is uploaded, the protection granted under this order shall cease to operate and the Municipal Corporation shall be entitled to immediately demolish the structure;
- (vi) We make it clear that we have made no adjudication on the merits of the regularization application proposed to be made by the petitioners;
- (vii) It will be open for the third respondent to submit his written objections to the regularization application proposed to be made by the petitioners;
- (viii) Writ petition is disposed of on the above terms.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)