

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6705 OF 2018

Shri Baban Pandurang Kokate. ... Petitioners.

V/s.

The Municipal Commissioner,
Nashik Municipal Corporation and others. ... Respondents.

Ms.Neelam W. Bakshi for the petitioner.

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 petitioner, 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 petitioner states that the petitioner desires to apply for regularization of the structure subject matter of the impugned notice and the petitioner is willing to give an undertaking stating that in the event application for regularization/compounding of the subject structure is rejected, he will demolish the

structure within a period of eight weeks from the date of communication of the order of rejection to the petitioner. She further states that the petitioner has tendered an undertaking which is taken on record and marked “U-1” for identification. The learned counsel appearing for the third respondent submits that the petitioner has no title and, in fact, a suit for specific performance filed by the petitioner 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 petitioner.

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 petitioner taken on record and marked as “U-1” for identification is accepted.
- (ii) It will be open for the petitioner 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 petitioner's Architect. Till the date of communication of the order to the petitioner's 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 petitioner's Architect to enable the petitioner to comply with the undertaking and to remove himself from the subject structure. If the petitioner fails to comply with the undertaking given by him 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 petitioner;

- (v) We make it clear that on the failure of the petitioner 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;
- (vi) We make it clear that we have made no adjudication on the merits of the regularization application proposed to be made by the petitioner;
- (vii) It will be open for the third respondent to submit his written objections to 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.)