

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 7256 OF 2016

Shamim F. Ahmed and others. ... Petitioners
Vs.
Ulhasnagar Municipal Corporation and others. ... Respondents

WITH
CIVIL APPLICATION No. 200 OF 2017

Upasana Dharmapal Yadav ... Applicant
In the matter between
Shamim F. Ahmed and others. ... Petitioners
Vs.
Ulhasnagar Municipal Corporation and others. ... Respondents

Mr G.S.Godbole with Ms.Minal Chandnani i/b. Jaiwant S. Chandnani
for the petitioners.

Mr.R.S.Apte, Senior Advocate i/b. Suresh M. Kamble, for
respondent Nos. 1 to 3.

Mr. A.S.Rao, for the applicant in CAW/200/2017.

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

DATE : 15th March 2018.

ORAL JUDGMENT : (Per A.S.Oka, J.)

Heard the learned counsel for the Petitioners and the learned senior counsel for the first to third Respondents. The challenge in the petition is to the order 6th June 2016 passed by the first respondent-Municipal Corporation.

2. On the basis of the order dated 30th June, 2015 passed by this Court in Writ Petition No.6361/2014 an application for regularization was made on behalf of Lords Convent High School & Junior College, Ulhasnagar. The submission of the learned counsel for the petitioners is that the said application was treated by the Municipal Corporation as an application under the Regularisation of Unauthorised Developments in the City of Ulhasnagar Act, 2006 (for short the “the said Act of 2006”). He submitted that it is not the case of the petitioners that the structure subject matter of the petition was in existence prior to 1st January 2005. He would, therefore, submit that the petitioner was not required to fulfill the criteria laid down by the said Act of 2006.

3. The learned senior counsel for the 1st to 3rd respondents submits that the application of the petitioners has been considered. He also pointed out that the allegation against the petitioners is also of change of user. The submission of the learned counsel for the petitioners is that the present user is a permissible user.

4. We have considered the submissions. Perused the order dated 30th June, 2015 passed in Writ Petition No.6361/2014. The effect of the said order is that a permission was granted to the petitioners to apply for regularization. In the said petition, the challenge was to the notice dated 5th July 2014. The said challenge was not pressed, as a result of which the notice dated 5th July, 2014 has attained finality.

5. It is true that the application made by the petitioner on 3rd August, 2015 does not show that protection of the said Act of 2006 was claimed. Perusal of the impugned order shows that the first respondent-Municipal Corporation treated the said application as the one under the said Act of 2006 and therefore, the application was forwarded to the Member Secretary of the Committee constituted under the said Act of 2006. Therefore, the application will have to be reconsidered by the Respondents. We accordingly pass the following order:

- (i) The impugned order/communication dated 23rd May, 2016 (Exhibit "M" to the petition) is hereby quashed and set aside;
- (ii) We direct the first respondent to decide the application dated 3rd August, 2015 (Exhibit "L" to the petition) afresh. We reiterate that the said application shall not be treated as the one invoking the provisions of said Act of 2006;
- (iii) The said application shall be decided within a period of 60 days from today. The order passed on the said application shall be communicated to the petitioners;
- (iv) Till the date of communication of the order passed on the petitioners' application, action of demolition shall not be taken on the basis of the notice dated 5th July, 2014 subject to condition that the petitioners shall maintain status-quo as of today in respect of the entire building;
- (v) In the event of the order passed on the application for regularization be adverse to the petitioners, the protection granted above shall continue for a period of one month from

the date the order passed on the application of the petitioner is served;

(vi) As far as Civil Application No.200/2017 is concerned, in the light of above directions, it is not necessary to decide the issue of locus of the applicant. Therefore, we are inclined to dispose the civil application, keeping the said issue open;

(vii) We make it clear that we have made no adjudication on merits on the application for regularization;

(viii) If there are defects in the application dated 3rd August, 2015, an opportunity shall be granted by the Municipal Corporation to the petitioners to rectify the defects. If there are any defects found in the said application, a communication to that effect shall be issued by the Municipal Corporation to the petitioners;

(ix) The writ petition is disposed of in the aforesaid terms.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)