

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION (ST.) NO. 16802 OF 2018
IN
WRIT PETITION NO. 9058 OF 2016

Tungareshwar Academy Trust and another. ... Petitioners.

V/s.

State of Maharashtra and others. ... Respondents.

Mr.Uday P. Warunjikar for the petitioners.
Ms.Nisha Mehra, AGP for respondent Nos.1 to 3.
Ms.Swati H. Sagvekar for respondent No.4.

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

DATE : 5th July 2018.

P.C.:

The prayer is for review of the judgment and order dated 12th July 2017 in Writ Petition No.9058/2016. As one of the Judges constituting the Division Bench which passed the said judgment and order is sitting at Aurangabad Bench, as per Rule 3(2) of Chapter XXX of the Bombay High Court Appellate Side Rules, 1960, the review petition will have to be heard by this Bench. It is not in dispute that the review petitioner No.1- Trust encroached upon a government land bearing Survey No.282 at village- Pelhar, Taluka- Vasai and carried out illegal construction thereon of a building. The petitioner is running a school therein. Writ Petition No.9058/2016 was filed by the petitioner for

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challenging the notice dated 22nd July 2016 issued under sections 52, 53, 54 and 55 of the Maharashtra Regional and Town Planning Act, 1966 (for short “MRTP Act”) by the Vasai Virar City Municipal Corporation. By the said notice, the petitioner was called upon to remove the entire illegal construction. It appears from the annexures to the petition that an application for regularization of the encroachment was made by the petitioner under the provisions of the Maharashtra Land Revenue Code, 1966. By the judgment and order dated 12th July 2017 of which review is sought, the writ petition filed by the petitioner was rejected. While rejecting the writ petition, in paragraph-4 of the said judgment and order, a Division Bench of this Court observed thus:

4 Thus, the petitioner has illegally and high-handedly encroached upon the land vested in the Government. Though application is made by the petitioner in the year 2008 to the Collector for grant of the said land, for last 9 years, no such grant has been made by the Collector. Not only that the petitioner is an encroacher on Government land, the petitioner has specifically claimed that initially 29 classrooms were constructed to which 11 classrooms were added subsequently. The petitioner has claimed that in response to the appeal made by the Hon'ble Prime Minister for celebrating the Yoga Day, the petitioner constructed a shed obviously without obtaining permission. We must record that the appeal by the Hon'ble Prime Minister does not entitle anybody to make illegal construction for celebrating the International Yoga Day.

In paragraph-5, this Court noted shocking state of affairs. This Court noted that by granting admission to the several students, the petitioner has seriously jeopardized the educational career of the students. It is only

in the larger interest of the students, that while rejecting the writ petition, the following order was passed:

ORDER

- (i) Writ Petition is rejected;
- (ii) Notwithstanding rejection of the Petition, action of demolition shall not be taken by the respondents in respect of the structures on the property in question till 30th June, 2018 subject to condition of an office bearer of the petitioner who is duly authorized by the Trustees of the petitioner filing an undertaking in this Court within a period of six weeks from today stating therein that the entire construction will be removed by the petitioner on or before 30th June, 2018 and that the possession of the land will be handed over to the District Collector on or before the said date;
- (iii) Undertaking to further state that the petitioner will not carry out any further construction on the subject land;
- (iv) If such undertaking is not filed within a period of six weeks from today, the protection granted to the petitioner shall come to an end and the respondents shall proceed to carry out work of demolition;
- (v) In the event, the undertaking is given, but the petitioner fails to abide by the undertaking, without prejudice to the other remedies of the respondents, they shall proceed to demolish the construction without issuing any further notice to the petitioner. After construction is demolished by the respondents, it will be open for the State Government to take possession of the land in question;
- (vi) We grant liberty to the petitioner to apply for modification of this order on or before 30th June, 2018 only in the event the land bearing Survey No.282 on which the structure is standing is lawfully allotted to the petitioner;

- (vii) We make it clear that except for the liberty granted as aforesaid, the prayer for extension of time will not be entertained;
- (viii) All concerned to act upon an authenticated copy of this order.

Accordingly, an undertaking was furnished by the petitioner.

2. In review petition, the contention raised is that there is every possibility that the State Government will regularize the encroachment. Reliance is placed on certain documents to show that certain queries have been made by the State to the Divisional Commissioner. Therefore, by this review petition, extension of time to demolish the structure has been sought. It is also contended that as per the policy decision of the State Government, the structure is likely to be regularized.

3. The review petition is strongly opposed by the Municipal Corporation by filing a reply, placing reliance on the Panchanama dated 13th June 2018 and by annexing the photographs taken at the site. It was stated that not only that the petitioner has not abided by the undertaking, but even for the academic year 2018-19, admissions have been given to the students in the school run in the subject building. Further it is pointed out that virtually another additional floor was constructed in breach of the undertaking given to this Court not to carry out any further construction.

4. It is not disputed by the review petitioners that such additional construction was carried out. Even on the last date, the

learned counsel appearing for the review petitioners made a statement that the said structure will be removed. Today, a copy of Panchanama dated 4th July 2018 is tendered by the learned counsel appearing for the Municipal Corporation which records that the tin-shed construction on the first floor has been removed. However, RCC columns and iron channels are maintained as it is. The learned counsel appearing for the Municipal Corporation is justified in contending that if RCC columns and iron channels are kept as it is, there is every possibility that reconstruction will be made by the petitioner.

5. On behalf of the review petitioners, Shri Vinod Ramkrishna Verma, a Trustee has tendered an undertaking today which is taken on record and marked as “U-2” for identification. The said undertaking is to demolish the structure on or before 12th November 2018 and not to seek further extension of time for demolition of the structure.

6. Going by the admitted facts on record, considering the conduct of the petitioner, no indulgence deserves to be shown. The petitioner has committed a gross breach of the earlier undertaking which was accepted by the judgment and order dated 12th July 2017 and has carried out illegal construction. Notwithstanding the undertaking given to remove the entire structure by 30th June 2018, even for the present academic year, admissions have been granted to the students by the petitioner. After the present review petition was filed, only when it was pointed out by the learned counsel appearing for the Municipal Corporation regarding construction of additional structure, substantial

part of the same has been removed. Therefore, there would have been every justification to reject the review petition and to initiate action under the Contempt of Court Act, 1971. However, in the application for condonation of delay, it is mentioned by the review petitioners that teaching and non-teaching staff of the petitioner's school consists of 50 persons and some of the students belong to economically weaker section. It is only after considering the larger interests of the students that we are inclined to show indulgence in the light of the undertaking tendered today on behalf of the petitioner and marked as "U-2" for identification.

7. Though we are extending time to demolish the structure till 12th November 2018, we make it clear that if the petitioner makes an additional construction in breach of the undertaking, notwithstanding the order of this Court, it will be open for the Municipal Corporation to demolish the entire building after giving fifteen days' notice to the petitioner.

8. Accordingly, we pass the following order:

- (i) The review petition is rejected. The undertaking of the petitioner marked as "U-2" is hereby accepted;
- (ii) Only in the light of the undertaking that we direct the Municipal Corporation not to demolish the subject building till 12th November 2018;
- (iii) If the petitioner fails to demolish the subject building on or before 12th November 2018, the Municipal

Corporation shall demolish the same, if necessary with the assistance of the police force which shall be made available by the concerned local Police Station;

- (iv) We direct the Municipal Corporation to ensure that periodical visits are made to the subject site by the Municipal Officers to ensure that no further construction is carried out by the petitioner. In the event, any such further construction is carried out, notwithstanding this order, it will be open for the Municipal Corporation to demolish the entire building by giving fifteen days' notice to the petitioner.
- (v) We direct the petitioner to inform the parents/ guardians of all the students admitted in the school, whether during this year or earlier, about the nature of the order passed in Writ Petition No.9058/2016 and the order passed in this review petition. This direction shall be complied with within a period of three weeks from today. The petitioner shall file compliance affidavit to that effect within a period of three weeks from today.
- (vi) All concerned to act upon an authenticated copy of this order.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)