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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5113 OF 2018

Parshwa Associates ... Petitioner

Vs.

Kalyan Dombivli Municipal Corporation,
through its Commissioner and Ors. ... Respondents

WITH

CIVIL APPLICATION NO.1302 OF 2018

Shree Swaminarayan Sanskruti Seva Trust ... Applicant

In the matter between

Parshwa Associates ... Petitioner

Vs.

Kalyan Dombivli Municipal Corporation,
through its Commissioner and Ors. ... Respondents

WITH

CIVIL APPLICATION (ST) NO.18638 OF 2018

M/s. Parijat Developers ... Applicant

In the matter between

Parshwa Associates ... Petitioner

Vs.

Kalyan Dombivli Municipal Corporation,
through its Commissioner and Ors. ... Respondents

Mr. Atul G. Damle, Senior Advocate a/w Mr. Dharmesh Singh i/by Law
Competere Consultus for the Petitioner.

Mr. Abhijit P. Kulkarni for the Applicants in CAWST/18638/2018 and
CAW/1321/2018.

Mr. Sanjay Kadam a/w Ms. Apeksha Sharma, Mr. Sanjil Kadam and Ms.
Sayali Rajpurkar i/by Kadam and Co. for the Applicants in
CAW/1302/2018.

Mr. A.S. Rao for the Respondent No.1.

**CORAM : A.S. OKA &
RIYAZ I. CHAGLA, JJ.**

DATE : 2nd JULY 2018

P.C.

1 Civil Application (St) No.18638 of 2018 is not on board. It

is taken on board. We have heard the learned senior counsel appearing for the petitioner, the learned counsel appearing for the first respondent and the learned AGP for the second and third respondents. We have also heard the learned counsel representing the applicants in the aforesaid civil applications.

2 The learned senior counsel appearing for the petitioner on instructions of Shri Jignesh Vikmani (Partner of Parshwa Associates) who is personally present states that the petitioner is giving up the plea of deemed permission under sub-section (6) of section 45 of the Maharashtra Regional and Town Planning Act, 1966 (for short “MRTP”). He also states on instructions that the petitioner is not pressing for the challenge to the notices dated 20th March 2015 and 10th November 2016 as the demands made therein are subject matter of challenge in other proceedings. He states that the petitioner wants to apply for regularisation of the construction of 13th, 14th and 15th floors of the subject building. His submission is that in view of what is observed in the document signed by the Municipal Commissioner on 30th December 2013 (Exhibit – G to the petition), the petitioner will be entitled to regularisation of the said floors. On instructions, he states that there is no notice of demolition issued as regards 13th, 14th and 15th floors by the first respondent. We accept the aforesaid statements.

3 The learned counsel appearing for the applicant in the aforesaid civil applications contend that apart from the fact that the petitioner has suppressed several material facts and documents, the petitioner has no right to apply for regularisation.

4 The only prayer made in this petition by the learned senior counsel appearing for the petitioner on instructions is that if application for regularisation is made by the petitioner in respect of 13th, 14th and 15th floors, the same may be directed to be decided in accordance with law after taking into consideration the document at Exhibit-G. The said prayer is reasonable which deserves to be accepted. Even if we accept the said prayer, it does not mean that this Court has held that the petitioner has rights as claimed in the petition and that the petitioner is entitled to seek regularisation. Considering the peculiar facts of the case, if such application for regularisation is made, the Municipal Corporation is bound to consider the averments made in the aforesaid civil applications and documents annexed thereto before deciding the application for regularisation.

5 Accordingly, we dispose of the petition by passing the following order :-

ORDER

- (i) We accept the statements made by the petitioner which are recorded in paragraph no.2 above;

- (ii) If the petitioner makes an application for regularisation in prescribed manner and in prescribed mode through an architect, the first respondent shall consider the said application and take appropriate decision thereon within a period of 60 days from filing such application. While deciding the application, the Municipal Corporation is bound to consider the document at Exhibit – G to the petition;
- (iii) We make it clear that we have made no adjudication on the right of the petitioner in respect of subject property and right of the petitioner to apply for regularisation. Before deciding the regularisation application, the first respondent shall take into consideration the averments made in Civil Application No.1302 of 2018 and Civil Application (St) No.18638 of 2018 as well as documents annexed thereto;
- (iv) With the above directions, the petition is disposed of;
- (v) Pending Civil Applications do not survive and the same are disposed of.

(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)