

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8731 OF 2017

Sudhakar Narayan Shipurkar & Anr.

....Petitioners

Versus

The State of Maharashtra & Ors.

....Respondents

Mr. S.S. Patwardhan i/b. Chetan G. Patil for the petitioners.

Mrs. M.P. Thakur, AGP for the State.

**CORAM : RANJIT MORE AND
SMT. ANUJA PRABHUDESSAI, JJ.**

DATE : 21st FEBRUARY, 2018

P.C. :

1. Heard Mr. S.S. Patwardhan, learned counsel for the petitioners and Mrs. M.P. Thakur, learned AGP. None appears on behalf of respondent nos. 2 and 3 despite service.

2. By filing this petition under Article 226 of the Constitution of India, the petitioners are challenging the order dated 09th June, 2017 issued by the Respondent No.3 – Mangaon Nagar Panchayat staying the building permission and directing the petitioners to forthwith stop the construction work of the said building. The impugned notice itself shows that the building permission was granted to the petitioners on 18th May, 2017 in pursuance of the report of the Assistant Director of the Town Planning (ADTP) dated 25th April, 2017. The impugned order is passed as per the instructions dated 08th October, 2016 issued

by the ADTP. As stated above, despite notice none appeared on behalf of Respondent No.3. Mr. Maruti Dagadu Rathod – The Assistant Director of Town Planning, Alibag has filed an affidavit-in-reply opposing the petition. It is stated that the impugned order is passed under Section 51 of the Maharashtra Regional and Town Planning Act (for short 'MRTP Act') thereby directing the petitioners not to carry out further construction. Suffice to say that in terms of the provisions of section 51 of the MRTP Act, the Respondent No.3 – Mangaon Nagar Panchayat is required to pass a final order and before passing such order, the petitioners are required to be heard.

3. In our considered opinion, the petitioners cannot be restrained indefinitely from proceeding with the proposed construction. Respondent No.3 – Mangaon Nagar Panchayat will have to take final decision regarding revocation or modification of the building permission under section 51 of the MRTP Act and that can be done only after giving an opportunity of hearing to the petitioners. In these circumstances, we dispose of the petition by passing the following order :-

(i) The Respondent No.3 – Mangaon Nagar Panchayat is directed to pass final order under section 51 of the MRTP Act determining position regarding revocation or modification of the building permission as expeditiously as possible and preferably within a period of eight weeks from the date of receipt of copy of this order.

(ii) The impugned order dated 09th June, 2017 shall remain in force till the final decision of the Respondent No.3 – Mangaon Nagar Panchayat under Section 51 of MRTP Act.

(iii) The petitioners shall remain present before the Chief Officer of the Respondent No.3 – Mangaon Nagar Panchayat on 01st March, 2018 alongwith the copy of this order, in order to enable him to comply with this order.

(iv) Writ Petition is disposed of accordingly.

(SMT. ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)