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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11436 OF 2016**

M/s. Kundan and Jain Developers	... Petitioners
Vs.	
The Commissioner, Pimpri Chinchwad Municipal Corporation and Ors.	... Respondents

Mr. G.S. Godbole a/w Ms. Manisha Mane i/by ALMT Legal for the Petitioners.

Mr. Deepak R. More for the Respondent Nos.1 to 3.

Mrs. R.A. Salunkhe, AGP for the Respondent No.4.

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

DATE : 7th MARCH, 2018

PC.

1 Heard the learned counsel appearing for the petitioners, the learned counsel appearing for the first to third respondents and the learned AGP for the fourth respondent. Considering the controversy involved in the Petition, the same is immediately taken up for final hearing by issuing Rule. The respondents waive service.

2 On the application made by the petitioners, a development permission was granted on 4th August, 2012 under Section 45 of the Maharashtra Regional and Town Planning Act, 1999 (for short "MRTP

Act”) by the second respondent. The challenge in this Petition under Article 226 of the Constitution of India is to the notice dated 21st May, 2013 (Exhibit -B) issued by the Deputy City Engineer of Building Permission Department of the second respondent. By the said communication, the petitioners and their Architect were informed that there are certain defects in the building proposal on the basis of which the building permission was granted. The letter notes that the petitioner has not commenced development work. The petitioner was informed not to carry out any construction on the basis of the permission dated 4th August, 2012.

3 There is a reply filed as well as a rejoinder. To the reply filed by Shri Prakash Thakur filed on behalf of the second respondent - Municipal Corporation, a letter dated 9th May, 2013 has been annexed which is issued by the Deputy Director of Town Planning and Development of the second respondent to the Deputy City Engineer of Building Permission Department. It records that the development permission granted to the petitioner should be stayed. Today, the decision taken by the Municipal Commissioner of the second respondent on 5th March, 2018 is tendered on record and the same is marked as “D-1” for identification. In the said decision, the Municipal Commissioner has observed that stay granted to development

permission is proper. It is also stated that considering the fact that the development permission has been stayed from 21st May, 2013, it cannot be said that the development permission granted on 4th August, 2012 has lapsed.

4 The only issue which will have to be considered in this Petition under Article 226 of the Constitution of India is whether the second respondent had power to stay the development permission granted under Section 45 of the MRTP Act. The only contention of the learned counsel appearing for the first to third respondents is that the power to grant development permission and the power to revoke development permission which is conferred on the second respondent will include the power to stay the development permission granted.

5 It is true that under Section 51 of the Maharashtra Regional and Town Planning Act, 1966 there is a power conferred on the second respondent being the Planning Authority to revoke the development permission. There is also a power vesting in the second respondent under Section 258 of the Maharashtra Municipal Corporation Act, 1949 to cancel such a permission. The powers under both Sections can be exercised only after giving an opportunity of being heard to the person to whom development permission has been granted and that also after

making him aware of the grounds on which the development permission is proposed to be revoked/ cancelled. It is not necessary for us to enter into wider controversy whether statutory power to revoke the development permission will include the power to stay development permission pending the final disposal of the show cause notice.

6 Grant of development permission under Section 45 of the MRTP Act creates a right in favour of the person to whom the permission has been granted. On the basis of the said permission, he is entitled to do several things including commencing construction, entering into agreements for sale and disposal of the premises in the building proposed to be constructed. Therefore, even assuming that there is a power vesting in the Municipal Corporation to stay the operation of the development permission pending the decision of the show cause notice of revocation of permission, surely such power cannot be exercised without complying with the principles of natural justice and without giving an opportunity of being heard to the person to whom building permission has been granted especially when stay is not granted only for a limited period. It is not a case where stay was granted only for limited period and thereafter, the petitioners were heard.

7 We, therefore, hold that the impugned communication is completely in breach of principles of natural justice and therefore, the same is rendered illegal.

8 Accordingly, we dispose of the Petition by passing the following order :-

ORDER

- (i) Rule is made absolute in terms of prayer clause (a);
- (ii) We make it clear that in view of the findings recorded by us, this order will not preclude the Municipal Corporation from initiating appropriate proceedings in accordance with law;
- (iii) We make it clear that we have made no adjudication on the question whether development permission dated 4th August, 2012 is valid as of today in view of Section 48 of the Maharashtra Regional and Town Planning Act, 1966;
- (iv) We also make it clear that we have made no adjudication on factual contentions raised by the petitioners as well as the Municipal Corporation in the affidavits filed on record and all contentions of the parties are kept open.

(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)