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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.8887 OF 2015

Gorakhnath Narayan Bhoir ... Petitioner
Vs.
Kalyan Dombivali Municipal Corporation and Ors. ... Respondents

Mr. Raju D. Suryawanshi a/w Mr. Devendra Pawar for the Petitioner.
Mr. A.S. Rao for the Respondent No.1.
Mr. Musharaf Shaikh i/b. Ms. Kiran Bagalia for the Respondent No.2.
Mr. S.P. Thorat for the Respondent No.3.
Mrs. Nilima V. Sanglikar for the Respondent Nos.4 and 5.

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

DATE : 6th AUGUST 2018.

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P.C. :

1 Heard the learned counsel appearing for the petitioner. The learned counsel appearing for the fifth respondent tendered an affidavit of Shri Mahesh Vishwas Bhoir, a partner of the fifth respondent. She states that the fifth respondent wants to apply for regularisation of the subject building by taking recourse to Section 52(A) of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”) and the Rules framed thereunder. This petition under Article 226 of the Constitution of India has been filed inviting attention of the Court to the inaction of the Planning Authorities. It is alleged that though a complete illegal structure of ground plus four floors has been constructed on the subject property, no action has been taken.

2 In the affidavit filed by Shri Bhoir, reliance is placed upon permission dated 27th July 2007 allegedly granted by Nandivali

Grampanchayat under Section 52(1) of the Maharashtra Village Panchayat Act, 1958 and the plan sanctioned by the village panchayat.

3 However, we find that Exhibit – 3 to the reply is not a permission but it is a no objection purportedly issued by the said village panchayat. In fact, at the relevant time, the Planning Authority was different. In any case, now the fifth respondent has accepted the structure to be illegal and has stated that an application for regularisation will be made under Section 52(A) of the MRTP Act.

4 The submission of the learned counsel appearing for the petitioner is that the petitioner is the owner of the land on which the illegal building has been constructed and therefore, the building cannot be regularised. However, this is an aspect which will have to be considered by the Planning Authority. Though the petitioner has no right of hearing as far as regularisation application is concerned, the petitioner can file an objection in writing which will be considered by the first respondent – Municipal Corporation. The learned counsel appearing for the first respondent – Municipal Corporation states that for the relevant area, now the said Municipal Corporation is the Planning Authority. We accept the statement.

5 If the structure of the building is not regularised, it is obvious that the first respondent – Municipal Corporation will have to take action of demolition.

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

ORDER

- (i) It will be open for the fifth respondent to apply for regularisation under Section 52(A) of the Maharashtra Regional and Town Planning Act, 1966 read with the Rules made thereunder within a period of one month from the date on which this order is uploaded. If such an application is made in respect of the subject structure within a period of one month as aforesaid, the same shall be decided within 60 days. The application shall be made through an architect by a prescribed mode;
- (ii) The decision taken on the regularisation application shall be communicated to the fifth respondent's architect;
- (iii) Till the date of communication of the order of the regularisation application, the action of demolition of the subject building shall not be taken by the first respondent. If the order be adverse to the fifth respondent, the action of demolition shall not be taken for a period of one month from the date on which the order is served upon the fifth respondent's architect;
- (iv) It will be open for the petitioner to raise an objection in writing to the proposed regularisation application. The first respondent shall consider the objection in writing while deciding the application for regularisation;
- (v) On failure of the fifth respondent to apply for regularisation within a period of one month as specified in

clause (i) above, the first respondent shall proceed to demolish the building without any further notice to the fifth respondent. We make it clear that we have made no adjudication on the application for regularisation to be filed by the fifth respondent;

(vi) Petition is disposed of on above terms.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)