

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Review Petition (ST) NO. 28085 of 2017
IN
Writ Petition No.12737 of 2016

Shri Akram Aslam Bahauddin
And Ors.

...Petitioners

In the matter between ::

Shri Irfan Jalil Patel

..Petitioner

Versus

Bhiwandi Nizampur City
Municipal Corporation, Bhiwandi, Thane
and others.

..Respondents

....

Mr. Shakeeb Shaikh i/b. M.J. Nalawade, Advocate for the Petitioners.
Mr. R.S. Datar, Advocate for Respondent No.1.
Mr. N.R. Bubna, Advocate for Respondent No.2.
Mr. Irfan Jalil Patel, the original petitioner is present in person.

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CORAM : R. G. KETKAR, J.

DATE : 25th JANUARY, 2018

[IN CHAMBER AT 2:35 P.M.]

P.C.

1. Heard Mr. Shakeeb Shaikh, learned Counsel for the petitioners, Mr. R.S. Datar, learned Counsel for respondent No.1 and Mr. N.R. Bubna, learned Counsel for respondent No.2, at length.
2. At the joint request of the learned Counsel for the parties, Review Petition is taken up for hearing.
3. By this Petition under Section 114 read with Order XLVII Rule 1 of Code of Civil Procedure, 1908 (for short, 'C.P.C.'), the petitioners

herein, who were respondent Nos.2 to 5 in Writ Petition No.12737/2016, have sought review of the order dated 23.3.2017 passed in that Petition. By order dated 23.3.2017, the Writ Petition was disposed of thereby permitting the original petitioner to withdraw Regular Civil Suit No.803/2013 within two weeks from the date of the order in the following terms:

“(i) Petitioner shall withdraw R.C.S. No.803/2013 within two weeks from today by producing authenticated copy of this order before the learned trial Judge. The learned trial Judge will permit the Petitioner to withdraw the suit.

(ii) Within four weeks from today, Petitioner shall submit proposal for regularization of the construction in accordance with law to Respondent No.1 – Corporation;

(iii) Respondent No.1 – Corporation shall invite objections/suggestions from Respondents No.2 to 5/petitioners herein within two weeks from receipt of proposal for regularization of the construction. Respondents No.2 to 5 shall submit objections/suggestions within two weeks from receipt of proposal from Respondent No.1-Corporation;

(iv) If the Respondents No.2 to 5 do not submit objections/suggestions within two weeks thereafter, Respondent No.1-Corporation will be at liberty to consider the proposal in accordance with law;

(v) In the event of Respondents No.2 to 5 submitting objections/suggestions, Respondent No.1 – Corporation will consider those objections/suggestions and will consider the proposal of the Petitioner for regularization of the construction in accordance with law;

(vi) For a period of 16 weeks from today, both the parties shall maintain status-quo as of today. Order accordingly.”

4. The petitioners herein have filed this Review Petition *inter alia* on the ground that in terms of the order dated 23.3.2017, the original petitioner has not submitted the proposal to the respondent – Corporation for regularization of the construction. Mr. Shaikh has invited my attention to the letter dated 17.4.2017 (at Exhibit-2, page-210) and reminder dated 27.4.2017 (at Exhibit-3, page-211) of the reply filed by the original petitioner. He submitted that the original petitioner has not submitted the proposal in accordance with law. In fact the original petitioner has instituted a suit, namely, Regular Civil Suit No.597/2017 for perpetual injunction restraining the respondent – Corporation herein from demolishing the suit structure or any portion or any part thereof without following due process of law. He submitted that as the original petitioner has not submitted the proposal for regularization in accordance with law, the respondent Corporation ought to have taken steps. However, the original petitioner has filed suit for perpetual injunction and took out application for temporary injunction. Because of the order dated 23.8.2017 passed below Exhibit-12 by the learned trial Judge, the respondent – Corporation is prevented from taking any steps.

5. Mr. Datar was not in a position to controvert the submissions advanced by Mr. Shaikh as regards submission of the proposal in accordance with law. Even otherwise, I find that the letters dated 17.4.2017 and 27.4.2017 cannot be construed as a proposal for regularization in accordance with law. Section 44 of the Maharashtra Regional and Town Planning Act, 1966 (for short, 'Act') lays down that any person intending to carry out any development on any land has to make an application in writing to the Planning Authority for permission in such form and containing such particulars and accompanied by such documents, as may be prescribed. In exercise of power under Section 22(m) of the Act, the respondent – Corporation has framed Development Control Regulations for Bhiwandi-Nizampur Municipal Corporation, 1993 (for short, 'Regulations').

6. Regulation No.5 lays down the procedure for obtaining development permission and commencement certificate by giving a notice in writing to the Commissioner in the form in Appendix VI and such notice is required to be accompanied by plans and statements. Appendix VI requires the person intending to erect a building to enclose the plans and statements enumerated in items 1 to 6 wherever applicable, in quadruplicate, signed by licensed surveyor / engineer / structural engineer / supervisor or architect who has prepared the plans

and designs on behalf of the person enclosing therewith the documents enumerated in items 7 to 12. In view thereof, I am more than satisfied that the letters dated 17.4.2017 and 27.4.2017 cannot be construed to be proposal for regularization and consequently compliance of the order dated 23.3.2017.

7. Mr. Datar states that the original petitioner – Irfan Jalil Patel is present in person. Upon taking instructions from him, Mr. Datar assures that within four weeks from today, the original petitioner will submit a proposal for regularization of construction in terms of the Regulations framed by the respondent – Corporation keeping in mind Regulation No.5 and Appendix VI amongst other. He further assures that he will serve copy of the proposal on the petitioners herein. Mr. Shaikh assures that the petitioners herein will submit objections /suggestions to the respondent – Corporation within two weeks from receipt of the proposal from the original petitioner. If the original petitioner fails to submit the proposal of regularization within the stipulated time, the respondent – Corporation will be at liberty to take action in accordance with law. The respondent – Corporation will consider the proposal as also the objections submitted by the petitioners herein within six weeks from receipt of the objections / suggestions and pass a reasoned order. If the petitioners herein do not submit the

objections / suggestions within two weeks from receipt of proposal from the original petitioner, the respondent – Corporation will consider the proposal in accordance with law. The Corporation shall communicate its decision to the petitioners herein/original respondents No.2 to 5 and the original petitioner Irfan Jalil Patel within eight weeks from receipt of the objections / suggestions.

8. In view thereof for a period of 16 weeks from today, the parties shall maintain status quo in respect of the offending structure.

9. The original petitioner undertakes to withdraw the suit, namely, Regular Civil Suit No.597/2017 within two weeks from today by producing an authenticated copy of this order before the learned trial Judge seized of the suit. The learned trial Judge will permit the original petitioner to withdraw the suit.

10. All contentions of the parties, including the contention of the original petitioner based on the amendment to the Act, are expressly kept open.

11. Review Petition is disposed of accordingly with no order as to costs.

(R. G. KETKAR, J.)