

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2379 OF 2018

Bansraj Jaykaran Yadav and others. ... Petitioners
V/s.
Municipal Corporation of City of Vasai Virar
and another. ... Respondents.

WITH
WRIT PETITION NO. 464 OF 2015

Shri Kishor Damodar Dive. ... Petitioner.
V/s.
The Commissioner of Municipal Corporation,
Tal. Vasai, Thane and others. ... Respondents.

WP No.2379/2018

Mr.Amit B. Borkar with Mr.Amey Sawant i/b. Suresh M. Sabrad
for the petitioners.
Ms.Swati Sagvekar for the respondents.

WP No.464/2015

Ms.Aarti Kulkarni i/b. Mr.Sanjay C. Prabhu for the petitioner.
Mr.Nishant Rana i/b. Vidhi Partners for respondent No.1.

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

DATE : 21st March 2018.

P.C.:

Writ Petition No.464/2015 has been filed for seeking a writ
of mandamus directing the Vasai Virar Municipal Corporation (for short

“the said Corporation”) to `take further steps on the basis of the notice dated 28th November 2013 issued by the said Corporation to one Ramdhani Patiraj Yadav under sections 52, 53 and 54 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”).

2. Writ Petition No.2379/2018 has been filed for challenging the same notice dated 28th November 2013 and the subsequent notice dated 17th February 2018 issued by the said Corporation. The second notice was issued on the basis of the order passed in Writ Petition No.464/2015. The order dated 23rd February 2018 passed in Writ Petition No.2379/2018 records the statement made on behalf of the petitioners therein. Paragraph-2 of the said order reads thus:

2. The learned counsel for the Petitioners, on instructions, states that the Petitioners want to apply for regularisation of their structure. He states that the Petitioners will give undertaking that they will maintain status-quo as of today in respect of the subject structure, and will remove the same within specified period in case their application for regularisation is rejected. We accept the said statement.

Thereafter the first and second petitioners filed undertakings on 28th February 2018 which have been taken on record and marked as “U1” and “U2” for identification. Today, the third and fourth respondents have filed undertakings which are taken on record and marked as “U3” and “U4” respectively for identification.

3. The petitioners in Writ Petition No.2379/2016 have stated that they want to apply for regularization of the structures subject matter of the notices impugned therein. The petitioners have also given undertakings stating that in the event the applications for regularization made by them are rejected, they will remove the subject structures on their own within the time limit which may be fixed by this Court.

4. The fact that the petitioners have stated that they want to apply for regularization shows that the petitioners have accepted that the subject structures are illegal. In view of this factual position and in view of undertakings filed by the petitioners, both the petitions need not be kept pending and the same are disposed of by passing the following order:

(i) The undertakings given by the petitioners in Writ Petition No.2379/2018 and marked as “U1”, “U2”, “U3” and “U4” are accepted. It will be open for the said petitioners to apply for regularization in a prescribed form through a licensed Architect to the first respondent as per the procedure prescribed by the first respondent within a period of one month from today;

(ii) The application for regularization, if made by the petitioners, shall be decided by the appropriate authority of the said Corporation as expeditiously as possible and, in any event, within a period of sixty days from the date of filing of the application;

(iii) The order passed on the application for regularization shall be communicated by the said Corporation to the petitioners' Architect;

(iv) Till the date of communication of the order to the petitioners' Architect, an action of demolition shall not be taken on the basis of the notices impugned in Writ Petition No.2379/2018;

(v) If the order on the regularization application be adverse to the petitioners in Writ Petition No.2379/2018, the action of demolition shall not be taken for a period of six weeks from the date on which the order on the regularization application is served upon the petitioners' Architect. Within the said period of six weeks, the petitioners in the said petition shall remove the structures subject matter of the impugned notices. On their failure to remove the structures within the stipulated period of six weeks, the Municipal Corporation shall proceed to demolish the illegal structures without any further notice to the said petitioners;

(vi) We restrain the petitioners in Writ Petition No.2379/2018 from creating any third party rights in respect of the said structures subject matter of Writ Petition No.2379/2018 and from parting with the possession thereof till the structures are regularized. We also restrain the petitioners from making any further construction on the existing structures subject matter of the said writ petition;

(vii) Writ Petition No.2379/2018 is disposed of on the above terms.

(viii) In view of directions issued in Writ Petition No.2379/2018, it is not necessary, at this stage, to issue a writ of mandamus as prayed by the petitioner in Writ Petition No.464/2015. However, the petitioner in the said petition shall be at liberty to file a fresh petition in case there is default on the part of the said Corporation in performing its statutory duties.

(ix) We also make it clear that we have not made any adjudication on the merits of regularization application which is likely to be filed by the petitioners in Writ Petition No.2379/2018.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)