

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.249 of 2018**

Himachal Pradesh Horticulture Produce  
Marketing & Processing Corporation Ltd.

...Petitioner

vs

1.The State of Maharashtra & Anr.

...Respondents

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Mr.A.M.Saraogi, for the Petitioner.

Mr.M.M.Pabale, AGP for the State-Respondent No.1.

Mr.S.V.Marne, for the Corporation-Respondent No.2.

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**CORAM : NARESH H.PATIL ACTING C.J &  
G.S.KULKARNI, J.**

**DATED: 5<sup>th</sup> September,2018**

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**P.C.:-**

1. This petition was filed on 23 December 2016 seeking the following relief:-

“a) that this Hon'ble Court be pleased to issue appropriate writ, order and direction directing the Respondent No.2 not to take any action of demolition in respect of the sheds situated on the property being the property bearing Plot No.3/2, Sector 18, situated at Mafco Market Yard, Turbhe (Vashi), Navi Mumbai-400 705 until the Application for further construction is considered and decided and for a period of 15 days thereafter in case, if the said Application is decided against the Petitioners on such terms as this Hon'ble Court may deem fit and proper.”

2. The petitioner has acquired the premises in question under an agreement dated 20 December 1972 titled as “Licence Agreement” entered between Maharashtra Agricultural Development and Fertiliser Promotion Corporation Ltd. (for short 'MAFCO') as licensor and the petitioner as licensee. It is stated that the MAFCO is owned wholly by the State of Maharashtra. These premises licensed to the petitioner admeasures 11000 sq.meters. The licence agreement is placed on record at “Exhibit A”.

3. The petitioner had undertaken construction of large sheds on the open space of the premises, which were stated to be unauthorised and illegal by the municipal corporation. The corporation had also initiated demolition action by issuing a notice dated 8 November 2016. The petitioner had approached this Court by filing Writ Petition No.13147 of 2016. The Division Bench to which one of us (Naresh H. Patil, A.C.J.) is a party, has passed the following order on 29 November 2016:-

“ The petitioner received a notice dated 08/11/2016 from Navi Mumbai Municipal Corporation for removal of subject structures erected in the open space with the help of wooden stick and plastic shed within 15 days. The petitioner filed an application to the Corporation dated 20/08/2016 which reads thus :

“Dear Sir,

We are lawful occupant of Plot No. 3/2 (Ghat No.796 [part] situated at MAFCO APMC Yard, Sector 18, Navi Mumbai.

We say that, we have certain open area available in our said plot there we have erected sheds for packing fruits and

vegetable.

Hence you are requested to kindly consider our annexed herewith a blue print of our Plot showing sheds already in existing (Shed No. 3, 4,5, 6) therein. You are requested to grant your official approval for these sheds considering total area (FSI) as may be available in respect of our said Plot.

Any other details if required in the above subject matter be please to inform us so that such details can be provided from our end.

Please to the needful at the earliest.”

2. Learned Counsel for the petitioner submits that the subject structures are not temporary structures, but they are sheds which are of permanent nature and it could be regularized. Learned Counsel for the Corporation submits that sheds erected with wooden sticks and plastic shed cannot be termed as a permanent structures which could be regularized.

3. However, in case appropriate application is filed in accordance with law, the Corporation would deal with the same and pass appropriate orders on that application.

4. Learned Counsel for the petitioner submits that appropriate application in accordance with rules framed in the Maharashtra Regional and Town Planning Act,1966 would be submitted to the Corporation for regularization of the subject structures.

5. We dispose of the Petition by directing the Corporation that in case such application is filed, the Corporation would deal with the same on its own merits and in accordance with law. Keeping all issues on merits open, Petition is disposed of. Status-quo as on today shall be maintained by the parties for a period of two weeks from today.” (emphasis added)

4. It is the case of the petitioner that in pursuance of the said order passed by this Court, the petitioner had submitted a regularization application dated 9 December 2016 through its architect. Apprehending

that pending the regularization application, the respondent-corporation may initiate action of demolition, the present petition was filed in the year 2016.

5. This petition had remained pending from 2016 and it was moved before us on 29 August 2018 in view of the municipal corporation initiating demolition of the unauthorised sheds as constructed by the petitioner. In our order dated 29 August 2018, we recorded a statement on behalf of the municipal corporation that 20% removal work of the unauthorized structure is already over, and accordingly we adjourned the petition for hearing on 3 September 2018, on which date, it was further adjourned at the request of the petitioner for today.

6. The learned Counsel for the petitioner submits that the regularization application as filed by the petitioner, is pending consideration and therefore, the Corporation ought not to initiate any action for demolition of the structure. It is submitted that the petitioner would now become the owner of the premises as MAFCO has intended to transfer the premises in favour of the petitioner. At the same time, the learned Counsel for the petitioner does not dispute that the sheds which are constructed in the open space, are unauthorised. He also does not dispute that the open space was in fact let out by the petitioner to third parties to be used for commercial purposes. We have been shown the photographs where the commercial activities of agricultural produce are

clearly seen.

7. The learned Counsel for the municipal corporation contends that the nature of the structure is not a permanent structure, these are only sheds which are constructed and supported by wooden poles and bamboos. The sheds are thus not of a nature, which could be regularised under the provisions of Section 53 of the Maharashtra Regional and Town Planning Act. The learned Counsel for the corporation has placed on record an affidavit of Angai Salunkhe, Assistant Municipal Commissioner, D Ward, Turbhe, Navi Mumbai which has stated that an on-line application of the petitioner for regularization was rejected by the municipal corporation as far as back on 15 December 2016, as also the intimation of the rejection was dispatched to the petitioner by post and to that effect the record of the municipal corporation in the outward register is clear. It is submitted that the petitioner cannot deny the knowledge of rejection of the regularization application as the petitioners had completely remained silent on this, and in fact the petitioner has addressed a letter dated 28 August 2018 showing their willingness, to themselves dismantle the sheds. The said letter of the petitioner to the municipal corporation is required to be noted which reads thus:-

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Date:-28.08.2018

To,  
The Ward Officer,  
NMMC

D-WARD  
Turbhe, Navi Mumbai.

Dear Madam,

This is with reference towards the dismantling the temporary Monsoon shed in our premises. Kindly grant us 24 to 48 hours for dismantling the sheds. Because our farmers and suppliers perishable goods for export are being packed. Thanking you for your kind co-operation please.

Thanking you,

Yours faithfully,

Regional Manager  
H.P.Horticultural Produce  
Marketing & Processing Corp.Ltd.”

It is submitted on behalf of the Corporation that the petitioner which is stated to be a Government Corporation under the Government of Himachal Pradesh could not have undertaken such unauthorised and illegal construction and further make commercial use. The learned Counsel for the respondents therefore, submits that the petition deserves to be dismissed.

8. We have heard the learned Counsel for the parties. We have perused the record. It is not in dispute that the sheds which are constructed by the petitioners are in the nature of temporary sheds which are constructed on the open space of the premises by the petitioner and on a large scale. The petitioner has put these sheds for commercial use by entering into agreement with third parties and substantial amounts are also being earned by letting out the said open space as pointed out by the

municipal corporation in the reply affidavit. The said sheds are admittedly unauthorised, no permission whatsoever is granted either for installation of sheds or for changing the nature of the use to commercial use of the said area.

9. On ascertaining from the record, we are not prepared to accept the submissions as urged on behalf of the petitioners that the regularization application of the petitioner is not rejected. It is clear from the record that the regularization application of the petitioner was rejected by the municipal Corporation by a communication dated 15 December 2016. Apart from that the Corporation has well established procedure of informing the Architect by mobile phone SMS. Also the intimation of the rejection was dispatched to the petitioner, as clear from the outward register of the municipal corporation. Nonetheless the petitioner with full knowledge that these temporary sheds are illegal, permitted to exploit those sheds by undertaking commercial activities as also did not remove the sheds.

10. We are also surprised as to how the petitioner could assert a contention of legality of the structure or seek regularization of the structure when the same is not permissible under the provisions of the Maharashtra Regional and Town Planning Act. The petitioner, if so permissible in law, could have approached the municipal corporation with a proper proposal for undertaking any construction, before resorting to such illegal use of

open space. We have seen that many times parties apply for regularization only to buy time. The petitioner's case appears to be no different for these sheds in question.

11. Thus in a situation where the petitioner has clearly and grossly violated the provisions of law by undertaking such unauthorised construction of the sheds and further making commercial use of the said open space, we are surely not persuaded to interfere in the present petition. We are more than satisfied that the petition deserves no interference. It is accordingly rejected. No costs.

12. At this stage, the learned Counsel for the petitioners submits that there are farm produce of third parties which are kept in the sheds and they would be required to be removed. He prays for status quo as of today to continue for two weeks.

13. Only to enable removal of the goods we continue the status quo as of today for two weeks. It is made clear that no request for extension for any reason shall be entertained.

**(G.S.KULKARNI, J)**

**(ACTING CHIEF JUSTICE)**