

and 4th December, 2018 passed by the Respondent No.1-Corporation under Section 52(A) of the Maharashtra Regional and Town Planning Act, 1966. The Petitioner has also sought further directions to the Respondents to consider his regularisation application in respect of the notice structure.

4. One Hasanain Imtiyas Faruqui had earlier approached this Court by filing Writ Petition No.2058 of 2018 making grievance of the illegal construction carried out by the Petitioner. The Petitioner was the Respondent No.5 in that petition. The Petitioner had filed his affidavit and given an undertaking that he will remove the illegal notice structure in the event his proposal to regularisation is rejected. The said writ petition was disposed of by order dated 3rd April, 2018 based on the undertaking given by the Petitioner. Operative part of the said order reads thus:-

“(I) The undertakings in the affidavit of Shri Arshad Abdul Rab Siddhiki fifth respondent which is affirmed on 2nd April 2018 are accepted. The affidavit is taken on record and marked ‘A1’ for identification;

(II) We direct the Bhiwandi Nizampur Municipal Corporation to decide the application for regularization made by the fifth respondent within a period of 60 days from the date on which the said application is filed. The decision taken on the basis of the said application shall be communicated by the said Municipal Corporation to the Architect appointed by the fifth

respondent;

(III) Till the date of communication of the order to the Architect appointed by the fifth respondent, action of demolition in respect of the said structure shall not be taken;

(IV) If the application for regularization is rejected, the action of demolition shall not be taken for a period of six weeks from the date on which the order is communicated to the Architect appointed by the fifth respondent only with a view to enable him to comply with the undertaking given by him in his affidavit to remove the entire illegal construction;

(V) If the fifth respondent fails to remove the illegal construction within the period of six weeks as aforesaid, the Municipal Corporation shall proceed to demolish the structure without issuing any further notice to the fifth respondent;

(VI) We make it clear that we have made no adjudication on the merits of the application for regularization;

(VII) All contentions on merits are kept open;

(VIII) Rule is made partly absolute on above terms.”

5. The Petitioner thereafter filed regularisation application under Section 52 A of the Maharashtra Regional Town Planning Act, 1966. This application came to be rejected by order dated 22.6.2018. The Petitioner being aggrieved by the said order approached the Appellate Authority viz. the State Government by filing an appeal under Section 47 of the M.R.T. P. Act. The said appeal was disposed of by order dated 10.10.2018. The Appellate Authority observed that the Petitioner's application for regularization came to be rejected only on

the ground that some relevant documents are not filed and without giving an opportunity of hearing to the Petitioner. The Appellate Authority therefore directed the Respondent-Corporation to give hearing to the Petitioner and to give opportunity to the Petitioner to submit relevant documents to decide the application of the Petitioner in accordance with law. In pursuance of the Appellate order the Petitioner again approached to the Respondent -Corporation and submitted the said relevant documents, which were not earlier available. The Municipal Corporation however, without going into the said documents passed the impugned order thereby directing the Petitioner to remove the notice structure.

6. Mr. Bubna, the learned counsel for the Respondents-Corporation submits that the Petitioner's application for regularization was rejected and in terms of the order passed by the Division Bench in Writ Petition No.2058 of 2018 the Petitioner was required to remove the structure within six weeks, failing which the Respondent-Corporation was required to demolish the said structure. Mr. Bubna submits that since the Petitioner had not removed the structure the Corporation had no other alternative but to issue the impugned order.

7. It is pertinent to note that in terms of clauses 4 and 5 of the operative part of the order passed in Writ Petition No.2058 of 2018, in the event, Petitioner's application for regularization was rejected, the Petitioner was under obligation to remove the construction within a period of six weeks from the date of rejection of the application and on failure of the Petitioner to remove the illegal construction within a period of six weeks, the Municipal Corporation was directed to demolish the same. However, in the present case in view of the appellate order under Section 47 of the M.R.T.P. Act, rejection order passed by the Corporation has been set aside. In other words the Application is restored to file and in terms of the decision of the appellate authority the Corporation is duty bound to consider the Petitioner's application on its own merits. In view of the decision of this Court in W.P. No.2058 of 2018 the Corporation was not justified in issuing the impugned order during the pendency of the regularization application. Consequently, the impugned order cannot be sustained.

8. The Petition is accordingly allowed. The impugned orders dated 22nd June, 2018 and 4th December, 2018 passed by the Respondent No.1-Corporation are quashed and set aside. The Respondent No.1-Corporation is directed to decide Petitioner's

application afresh after taking into consideration additional documents filed by the Petitioner. This exercise shall be carried out within a period of six weeks from the date of receipt of the copy of this order.

9. It is expressly made clear that parties will be bound by the order passed by the Division Bench in Writ Petition No.2058 of 2018.

(SMT. ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)