

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LDG.) NO. 1706 OF 2018

Sanjay Thakur and others. ... Petitioners.
V/s.
Municipal Corporation and others. ... Respondents.

Mr.Mayur Shetty with Archan Shah i/b. M/s.Rajani Asso.
for the petitioners.
Ms.Vandana Mahadik for the respondent- MMC.

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

DATE : 13th June 2018.

P.C.:

Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the first to third respondents. Considering the nature of controversy involved in the petition, it is forthwith taken up for final disposal.

2. The learned advocate for first to third respondents waives service. Considering the factual controversy, it is not necessary to serve the fourth respondent.

3. A notice under sub-section (1) of section 53 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act") was issued to the owners and occupiers of the subject building alleging therein that unauthorized additions and alterations amounting to

FSI violation have been made while construction of the building. The fourth respondent is the developer. The fourth respondent has constructed the subject building. It is pointed out from Exhibit-C to the petition that the fourth respondent applied for regularization to the first respondent- Corporation. Page-27 is another document which shows that the fourth respondent applied for regularization. The learned counsel appearing for the petitioner states that the application for regularization is still pending. The learned counsel appearing for the Municipal Corporation accepts the fact that the application is pending.

4. Notwithstanding pendency of the application, on 9th May 2018, a notice under section 488 of the Mumbai Municipal Corporation Act, 1888 was issued informing that on 10th May 2018 the unauthorized construction will be demolished.

5. In view of sub-section (3) of section 53 of the MRTP Act, as a matter of right, an application for regularization can be made by a person to whom a notice under sub-section (1) of section 53 is served. In the present case, the application for regularization was made within the period stipulated in sub-section (3) of section 53 of the MRTP Act. Thus, till the disposal of the said application, action of demolition cannot be taken on the basis of both the impugned notices.

6. If the application for regularization is rejected, the fourth respondent will have a remedy to prefer a statutory appeal against the order of rejection.

7. Accordingly, we pass the following order:

- (i) We direct the first respondent to decide the application for regularization as expeditiously as possible and, in any event, within a period of six weeks from today;
- (ii) The order passed on the regularization application shall be communicated to the Architect who has filed the application as well a to the petitioners;
- (iii) Till the date of communication of the order passed on the regularization application to the petitioners, no action shall be taken on the basis of both the impugned notices;
- (iv) If the application for regularization is rejected, action shall not be taken on the basis of both the impugned notices for a period of one month from the date on which the said order is communicated to the petitioners;
- (v) We make it clear that we have made no adjudication on the merits of the pending regularization application and all contentions are kept open;
- (vi) Rule is made absolute on the above terms.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)