

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

WRIT PETITION (LDG.) NO. 2259 OF 2018

Madarsa Noorul Islam Education Trust. ... Petitioner.
V/s.
Mumbai Metropolitan Region Development
Authority and another. ... Respondents.

Mr.Vikil Dhoka with Mr.Mukesh Gupta and Ms.Shyli Shetty
i/b. Solicis Lex for the petitioner.
Mr.G.W.Mattos for respondent No.1.
Ms.Pallavi Thakar for the respondent- MMC.

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

DATE : 17th July 2018.

P.C.:

The petition relates to a religious structure. Prayers (c) and (d) of this petition are the only substantive prayers which read thus:

“(c) This Hon'ble Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, order and/or direction to the Respondent No.1 under Article 227 of the Constitution of India, the Respondent may be directed that the structure of Madarsa Noorul Islam Education Trust to be classified either in “A” Category or in “C” Category and to deal as per due process of Law.

(d) This Hon'ble Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, order and/or direction to the Respondents under Article 227 of the Constitution of India after perusing the records in respect of the Madarsa constructed upon MMRDA Colony, DR-2, Behind Juhu Co-operative Society, Somani Gram, Ram Mandir Road, Oshiwara, Goregaon (West), Mumbai- 400

104, classify the same under Class “A” or Class “C” category as per Government Resolution dated 5th May, 2011 and thereby quash and set aside the demolition notice dated 8th November, 2017 and the impugned notice, being Exhibit-”J” hereto.”

On 24th August 2017, a public notice was published by the first respondent- planning authority declaring the proposed classification of religious structures in terms of the order of the Apex Court passed in Civil Appeal No.8519/2006 and the order of this Court in PIL No.104/2010. On 8th November 2017, a notice of demolition was issued in respect of the subject structure. The notice of demolition records that the size of the subject structure is 20 m x 15 m which is in the open space between two buildings. The notice dated 8th November 2017 refers to public notice published in various newspapers inviting suggestions/ objections regarding categorization of religious structures in categories “A”, “B” and “C”. It records that the Municipal Corporation Level Committee has granted approval for classifying the subject structure as falling in category-B in its fifth meeting held on 31st October 2017 and that is why the first respondent issued this notice of demolition. The petitioner did not challenge the said notice. Instead of challenging the said notice, on 20th April 2018, the petitioner through its Architect submitted an application for regularization to the first respondent praying for regularization of the subject structure. By a communication dated 7th March 2018, the application for regularization was rejected by the first respondent. There is one more letter dated 8th June 2018 addressed by the first respondent to the petitioner's Architect which refers to a letter dated 7th March 2018. The application for regularization was accordingly rejected.

2. The submission made by the learned counsel appearing for the petitioner is that classification of the subject structure into category-B is wrong and the same ought to have been classified as falling either in category-A or category-C. Therefore, in prayer clause (d), a prayer is made for quashing and setting aside the demolition notice dated 8th November 2017.

3. The prayers made in this petition cannot be considered for more than one reasons. The notice dated 8th November 2017 directing demolition of structure admeasuring 20 m x 15 m was issued by recording that after following due procedure, the structure has been classified as falling in category-B. The petitioner did not challenge the said notice in any manner. On the contrary, on 20th April 2018, through an Architect, the petitioner applied for regularization of the subject structure. In fact, the Architect submitted a plan for regularization. This shows that the petitioner accepted the correctness of the notice. A conjoint reading of letters dated 7th March 2018 and 8th June 2018 issued by the first respondent shows that the proposal for regularization has been rejected. The petitioner has not chosen to challenge the said decision of rejecting the regularization application. The fact that the petitioner applied for regularization shows that the petitioner has accepted the categorization of the said structure as falling in category-B. The application for regularization was made by the petitioner unconditionally. As stated earlier, there is no challenge to the decision of rejection of the application for regularization. Therefore, the issue of classification of the subject

structure as falling in category-B has become final. Hence, the said issue cannot be allowed to be reopened. Even otherwise, as the petitioner accepted the correctness of the notice dated 8th November 2017 and applied for regularization, it is no longer open for the petitioner to challenge the legality and validity of the notice dated 8th November 2017. Therefore, no relief which is prayed in this petition can be granted.

4. The learned counsel appearing for the petitioner, at this stage, submitted that the petitioner wants to apply for re-location of the subject structure by seeking allotment of a plot from the first respondent. The learned counsel appearing for the first respondent states that the petitioner has no right to seek re-location as the structure has been classified as falling in category-B. As per the directions issued by the Apex Court and this Court which are referred earlier, the structures falling in category-B are not entitled to either protection or re-location. However, independently of the said judgment, and the government resolution dated 5th May 2011, the first respondent can consider the prayer for allotment of suitable plot to the petitioner in accordance with law.

5. We make it clear that the direction which we propose to issue directing the first respondent to consider a prayer for allotment of suitable plot shall not be construed as a protection of the subject structure and whether such prayer for allotment of plot is granted or not, the subject structure will have to be removed.

6. Accordingly, we pass the following order:

- (i) The writ petition is rejected. However, it will be open for the petitioner to make an application to the first respondent for allotment of a suitable plot on which the subject structure can be re-located. If such an application is made by the petitioner within a period of six weeks from today, the same shall be disposed of within a period of three months from today and the order passed on the said application shall be communicated to the petitioner immediately after its disposal. For a period of four months from today, the subject structure shall not be demolished;
- (ii) We make it clear that on the failure of the petitioner to apply for allotment of plot to the first respondent within a period of six weeks from today, the first respondent shall take action of demolition on the basis of the notice dated 8th November 2017.
- (iii) We make it clear that we have not made any adjudication on the rights of the petitioner to seek allotment of a plot.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)