

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

REVIEW PETITION (LDG.) NO. 63 OF 2018
IN
WRIT PETITION NO. 1729 OF 2015

Niraj Mansukhlal Ved. ... Petitioner.
V/s.
Natwarlal Tulsidas Mehta and others. ... Respondents.

Mr.Simil Purohit with Mr.Rubin Vakil and Mr.Manish Doshi
i/b. Vimadalal & Co. for the petitioner.
Mr.Vijay Waghela for respondent No.1.
Mr.Sagar Patil for the respondent- MMC.

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

DATE : 17th September 2018.

P.C.:

Heard the learned counsel appearing for the review petitioner. The review petitioner was the respondent No.25 in the writ petition. The review petitioner constructed RCC structure consisting of ground plus 15 upper floors in contravention of the permission granted by the Mumbai Municipal Corporation (for short “the Municipal Corporation”). The Municipal Corporation issued a notice under sub-section (1) of section 53 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”) on 16th August 2013. By the said notice, the Municipal Corporation called upon the review petitioner to remove the illegal construction of RCC slabs from 1st to 15th floors which

were in contravention of the approved plan. In view of sub-section (3) of section 53 of the MRTP Act, the review petitioner could have approached the Municipal Corporation by way of application for regularization within thirty days from the date of service of the notice. Instead of applying for regularization to the Municipal Corporation within the time prescribed by law, the review petitioner applied for regularization to the fourth respondent- Slum Rehabilitation Authority on 1st August 2013. As the review petitioner could not pay the amount demanded by the fourth respondent, the regularization proposal could not go through. In fact, a suit was filed in the Civil Court by the review petitioner for challenging various notices issued by the Municipal Corporation including the notice dated 16th August 2013. On 4th May 2018, on the prayer made by the review petitioner, the suit was permitted to be withdrawn without grant of any liberty. Thereafter, it was revealed that on 29th November 2017, the review petitioner applied for regularization. An order was passed on 7th February 2018 by the first respondent- Slum Rehabilitation Authority recording that the application for regularization made by the review petitioner is rejected. The review petitioner was directed to demolish the structure. Thereafter, the review petitioner filed a writ petition in this court which was withdrawn by the order dated 14th March 2018 which is clarified by the order dated 12th April 2018. Though a liberty was granted to the review petitioner to file a fresh petition, the review petitioner did not file any such petition. The review petitioner claimed that three upper floors were demolished by him after the order was passed in the petition.

2. The application for regularization dated 29th November 2017 was submitted by the review petitioner in which it was disclosed that

unauthorized work comprises of Stilt + 4 level podium + 5th to 14th upper floors. It is noted in the order passed in the writ petition of which review is sought that the Hon'ble Minister for Housing Department directed a report to be submitted to the Chief Executive Officer of the respondent No.4. The report records that the construction of ground + 14 upper floors is carried out by the respondent without approval of the Municipal Corporation.

3. The ground urged by the review petitioner for review of the order dated 5th June 2018 is that firstly the review petitioner was not heard when the order in writ petition was passed. Secondly, the observations made in the said order will affect the proposal for regularization submitted by the review petitioner to the Municipal Corporation.

4. We must note here that firstly the judgment and order dated 5th June 2018 passed in the petition does not deal with the issue of entitlement of the review petitioner to apply for regularization. Now, this review petition is based on an application dated 16th July 2018 made by the review petitioner to the Municipal Corporation for regularization. The notice dated 16th August 2013 has been served by the Municipal Corporation under sub-section (1) of section 53 of the MRTP Act to the review petitioner. The review petitioner had time of 30 days to apply for regularization in terms of sub-section (3) of section 53. After taking a chance by making an application for regularization to the fourth respondent, belatedly, an application for regularization is made by the review petitioner on 16th July 2018 to the Municipal Corporation which

had issued the notice dated 16th August 2013 under sub-section (1) section 53 of the MRTP Act. As stated earlier, a suit was filed by the review petitioner for challenging the said notice in which ad-interim relief was granted. Even the said suit was belatedly filed in the year 2017. On 4th May 2018, the review petitioner withdrew the said suit and that is the reason, in the order of which review is sought, this Court observed that the notice under sub-section (1) of section 53 issued on 16th August 2013 has become final.

5. The observations made in the order dated 5th June 2018 are based on material on record. We find no error apparent on the face of record and even otherwise there is no ground for review. The review petition is accordingly dismissed.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)