

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.

WRIT PETITION NO. 9408 OF 2012

Nihalchand Laxmichand Barlota Petitioner

Versus

Municipal Council, Jalna & Ors. Respondents

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Shri. Ajay S. Deshpande, AGP for respondent/State
Shri. Amit S. Deshpande, Advocate for respondent No. 1
Shri. P. K. Lakhotiya, AGP for respondent/State
Shri. L. H. Kawale h/f Shri. K. J. Suryawanshi, Advocate for
respondent No. 3

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**CORAM : S. V. GANGAPURWALA
AND
A. M. DHAVAL, JJ.**

DATE : 1ST APRIL, 2019

ORAL ORDER:

1. We have heard Shri. Ajay S. Deshpande, learned counsel for the petitioner, Shri. Amit S. Deshpande, learned counsel for respondent No. 1, the learned Assistant Government Pleader for State and Shri. L. H. Kawale, learned advocate for respondent No. 3.

2. It is submitted by the learned counsel for respondent No. 1 that, earlier the permission was granted to the respondent No. 3 for construction to the extent of 81.2 sq.mtrs. Subsequently, the construction permission was revised and permission was restricted by

the respondent No. 1 for construction to the extent of 52.88 sq.mtrs. The construction of respondent No. 3 is found in excess. Respondent No. 1 had issued notice to the respondent No. 3.

3. It is further submitted by learned counsel for respective parties that, respondent No. 3 had filed civil suit challenging the notice issued by respondent No. 1. The suit was dismissed. The appeal filed against the same was also dismissed and the second appeal filed by respondent No. 3 was withdrawn on the premise that the appeal would be filed u/s 47 of the Maharashtra Regional Town Planning Act (hereinafter referred to as "MRTP Act").

4. The petitioner was given liberty to prosecute the appeal under the provisions of MRTP Act.

5. It appears that, the appeal filed by the respondent No. 3 under the provisions of MRTP Act was rejected by the State Government under its order dt. 11.02.2011. The same was set aside under the orders of this Court dt. 25.11.2013 in Writ Petition No. 6378 of 2011 and the matter was remitted to the State Government. Subsequently, the review filed by the present petitioner came to be dismissed.

6. The learned Assistant Government Pleader submits that, as per the communication received from respondent No. 1, the proceedings of appeal are not traceable. In fact, this Court has remitted the matter under order dt. 25.11.2013, the same ought to have been decided by now.

7. It is submitted that, the papers are not traceable with the State Government with regard to the appeal filed by respondent No.3.

8. In that case, within two weeks from today the respondent No. 3 shall submit the copy of the appeal memo by way of reconstruction i.e. memo of the appeal filed earlier u/s 47 of the MRTP Act. The State Government shall decide the said appeal within six months of the receipt of the appeal memo. In case, respondent No. 3 fails to file the papers within two weeks with the State Government i.e. the papers of the appeal that the respondent No. 3 had filed before the Minister in the year 2010, then respondent No. 1 will be entitled to proceed further to take action as per its notice. In case the papers of the appeal are filed by respondent No. 3 within two weeks, the State Government shall after following the principles of natural justice decide the appeal filed within six months.

Depending upon the decision taken in the appeal, the respondent No. 1 shall take further steps.

9. The learned Assistant Government Pleader shall communicate this order to the concerned. The petitioner may represent himself before the State Government. If the petitioner appears before the State Government, the State Government may hear the petitioner also.

10. The Writ Petition is accordingly disposed of. No costs.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

Punde