

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 5372 OF 2016

Ziya A. Maskati ... Petitioner.
Represented through her
constituted Attorney-Sakib R.Maskati.

V/s.

The Chief Officer,
Mahabaleshwar (Hill Station) Municipal
Council and Another. ... Respondents.

Mr. Thomas James, Advocate i/by Auris Legal for the
Petitioner.

Mr. Yatin Malvankar, Advocate for Respondent No. 1.
Mrs.K.R. Kulkarni, "B" Panel Counsel for the State -
Respondent No.2.

CORAM : R.M. BORDE & N.J. JAMADAR, JJ.

DATE : JUNE 03, 2019.

PC :

1 Heard. Rule.

2 With the consent of the parties, Petition is
taken up for final disposal at the admission stage.

3 The Petitioner is objecting the Notice dated
06.04.2016 issued by the Mahabaleshwar Hill Station

Municipal Council under section 53 of the Maharashtra Regional Town Planning Act, 1966, calling upon the Petitioner to remove the unauthorized development. It is the contention of the Petitioner that as the development carried out by him is in conformity with the permission accorded by the Mahabaleshwar Hill Station Municipal Council and that the Petitioner has not carried out any development in excess of the permission.

4 On perusal of the Notice, impugned in the petition, issued by the Mahabaleshwar Hill Station Municipal Council, it transpires that the objection raised by the said Municipal Council is in respect of modifications carried out such as replacement of the tin sheets roof and putting cement concrete cover. According to the Petitioner, the development that has been carried out is in conformity with the permission accorded and no additional structure has been constructed. It has not been brought to our notice by the learned counsel appearing for Mahabaleshwar Hill Station Municipal Council that the development carried out by the Petitioner amounts to raising a new construction, which is beyond the scope of work permissible under the development permission. Learned counsel appearing for the Petitioner has

invited our attention to the sanctioned plan issued by the Mahabaleshwar Hill Station Municipal Council together with the letter of permission dated 02.11.2010. The petitioner specifically contends that the development carried out by him is within the scope of the work of repairs and restoration of work and no additional construction has been raised.

5 In the facts and circumstances of this case and since the Mahabaleshwar Hill Station Municipal Council has failed to demonstrate that the Petitioner has, in-fact, deviated from the permission and has raised construction in excess of the permission granted and since the Petitioner has already completed the development work in conformity with the letter of permission issued by the said Municipal Council on 02.11.2010, the Notice impugned in the Petition issued by the Municipal Council need not be acted upon. In the circumstances, no further steps in pursuance to the Notice issued by the Mahabaleshwar Hill Station Municipal Council in conformity with the provisions of section 53 of the MRTP Act is within contemplation since the development work in conformity with permission accorded by the said Municipal Council has already been carried out. If the Municipal Council comes to the

conclusion, upon conducting survey, that any excess development has been carried out in violation of the construction permission accorded earlier, it would be open for the Mahabaleshwar Hill Station Municipal Council to take steps as permissible in law and quashment of the Notice impugned in this petition would not be an impediment for taking such steps.

6 The Notice impugned in this petition, issued under section 53 of the MRTP Act, is quashed and set aside with liberty to the Mahabaleshwar Hill Station Municipal Council to take steps as permissible in law.

7 Rule is made absolute to the extent as specified above with no order as to costs.

(N.J. JAMADAR, J.)

(R.M. BORDE,J.)

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