

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3704 OF 2019

Baban Pandurang Kokate Petitioner

Vs.

The Municipal Commissioner,
Nashik Municipal Corporation,
Nashik & Others Respondents

WITH

WRIT PETITION NO.3703 OF 2019

Late Vishwanath Hari Mate

(Deceased) through Legal Heirs

1. Smt. Tarabai Vishwanath Mate

& Others

.... Petitioners

Vs.

The Municipal Commissioner,
Nashik Municipal Corporation,
Nashik & Others Respondents

WITH

WRIT PETITION NO.3705 OF 2019

Late Shriram Bhaguji Kadale

(Deceased) through Legal Heirs

1. Smt. Tarabai Shriram Kadale

& Others

.... Petitioners

Vs.

The Municipal Commissioner,
Nashik Municipal Corporation,
Nashik & Others Respondents

WITH

WRIT PETITION {STAMP} NO.8214 OF 2019

Sau. Saroj Amarsingh Arya

.... Petitioner

Vs.

The Municipal Commissioner,
Nashik Municipal Corporation,
Nashik & Others

.... Respondents

Ms Neelam W. Bakshi for the Petitioner in all petitions.

Mr. J. Shekhar with Sairuchita i/by J. Shekhar & Co.

for Respondent Nos.1 to 4 in all petitions.

Mr. Rameshwar N. Gite for Respondent No.5 in all
petitions.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : APRIL 09, 2019

P.C:

1. The petitioner, Baban Pandurang Kokate, has challenged in Civil Writ Petition No.3704 of 2019 a Notice issued by the Municipal Corporation and has stated that in terms of the order passed in the earlier round, namely, in Civil Writ Petition No.6705 of 2018, no decision having been taken on the regularisation application, the construction is deemed to have been regularised.

2. This petitioner had in the previous writ petition, namely, Civil Writ Petition No.6705 of 2018 challenged the Notice, copy of which is at Exhibit-G, dated 23-4-2018 (page 35 of the paper-book).

3. On 19-7-2018, at page 43 of the paper-book, that writ petition was disposed of by the following order:-

“Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the first and second respondents and the learned counsel appearing for the third respondent.

2. The learned counsel appearing for the petitioner states that the petitioner desires to apply for regularization of the structure subject matter of the impugned notice and the petitioner is willing to give an undertaking stating that in the event application for regularization/ compounding of the subject structure is rejected, he will demolish the structure within a period of eight weeks from the date of communication of the order of rejection to the petitioner. She further states that the petitioner has tendered an undertaking which is taken on record and marked “U-1” for identification. The learned counsel appearing for the third respondent submits that the petitioner has no title and, in fact, a suit for specific performance filed by the petitioner is pending. He submits that the third respondent may be heard by the Municipal Corporation before dealing with the application for regularization which may be made by the petitioner.

3. As far as contention raised by the third respondent is concerned, there is no question of giving any opportunity of being heard to the third respondent while Municipal

Corporation decides the application for regularization. However, the third respondent can file written objections which shall be taken into consideration by the concerned authority of the Municipal Corporation.

4. Hence, we dispose of this writ petition by passing the following order:

- (i) The undertaking of the petitioner taken on record and marked as "U-1" for identification is accepted.*
- (ii) It will be open for the petitioner to apply for regularization of the subject structure within a period of one month from today. If such an application for regularization is made within the stipulated period, the same shall be decided within a period of sixty days from the date of filing of the application. The application shall be filed in a prescribed format and by a prescribed mode through an Architect;*
- (iii) The decision taken on the application for regularization shall be communicated by the Nashik Municipal Corporation to the petitioner's Architect. Till the date of communication of the order to the petitioner's Architect, an action of demolition of the subject structure shall not be taken on the basis of the impugned notice;*
- (iv) If the application for regularization is rejected, the action of demolition shall not be taken for a period of eight weeks from the date on which the order of rejection is served to the petitioner's Architect to enable the petitioner to comply with the undertaking and to remove himself from the subject structure. If the petitioner fails to comply with the undertaking given by him within the stipulated period of eight weeks, apart from other remedies which will be available, it will be open for the Municipal Corporation to demolish the subject structure without any further notice to the petitioner;*

- (v) *We make it clear that on the failure of the petitioner to apply for regularization within the stipulated period of one month from today, it will be open for the Municipal Corporation to demolish the subject structure;*
- (vi) *We make it clear that we have made no adjudication on the merits of the regularization application proposed to be made by the petitioner;*
- (vii) *It will be open for the third respondent to submit his written objections to the regularization application proposed to be made by the petitioner;*
- (viii) *Writ petition is disposed of on the above terms.”*

4. The petitioner in terms of this order undertook that, if the regularisation application is not granted he will not resist any demolition and will allow even a constructed portion affected by the Development Plan Road or its widening to be demolished.

5. It is evident that the Municipal Corporation wants to widen the road. It is evident that the Municipal Corporation took on record an application dated 18-8-2018 of at least six entities, including this petitioner and stated in its communication that the proposal for regularisation is rejected. The communication in

that behalf is at Exhibit-L, page 47, dated 19/20-11-2018.

6. The argument of the petitioners' Advocate is that the earlier round resulted in this petitioner being granted liberty to apply for regularisation of the construction and a proposal was submitted on 18-8-2018. The rejection of this proposal is communicated by an order/communication dated 19/20-11-2018, which is 92 days from the date of the proposal being filed. If the communication is received on 26-11-2018, then all the more this is impermissible in law. Reliance is placed on sub-section (5) of Section 45 of The Maharashtra Regional and Town Planning Act, 1966 ("the MRTP Act" for short) in this behalf.

7. There is no merit in any of the contentions raised before us. Firstly, the Notice issued by the Municipal Corporation seeking to demolish the portion of the petitioners' property, which is affected by the road widening, has not been challenged. Secondly, its correctness, legality and validity has been accepted in the earlier round of litigation. Thirdly, this

Court recorded an undertaking of this petitioner that in the event an application for regularisation is made but it is rejected, the petitioner will not then question the act of the Municipal Corporation but co-operate in demolishing the petitioner's property or portion thereof affected by the road widening.

8. Finally, what we find is that sub-section (5) of Section 45 follows sub-sections (1) to (4) thereof. There is nothing like regularisation and what the law contemplates is a retention and that is permitted by sub-section (3) of Section 53 of the MRTP Act. Once such an application under sub-section (3) of Section 53 of the MRTP Act has to be dealt with in the manner prescribed for dealing with an application under Section 44 of the MRTP Act, then, sub-sections (1) to (4) of Section 45 permit the Planning Authority to make an order subject to the provisions of the MRTP Act and such an order in writing may grant the application under Section 44 unconditionally. It may grant the permission sought *vide* the application under Section 44 subject to such general or special conditions as it may impose with the previous approval of the State Government, or refuse

the permission. Sub-section (2) says that any permission granted under sub-section (1) with or without conditions shall be contained in a commencement certificate in the prescribed form. Sub-section (3) of Section 45 mandates that every order granting permission subject to conditions, or refusing permission shall state the grounds for imposing such conditions or for refusing such application. In the instant case, an order has been made refusing permission and the grounds are also set out at Exhibit-L which is nothing but a copy of this order/communication refusing the permission. The argument is that by sub-section (5) the decision whether to grant or refuse permission having not been communicated within 60 days from the date of receipt of the applicant's application, or within 60 days from the date of receipt of a reply from the applicant in respect of any requisition made by the Planning Authority, whichever is later, such permission shall be deemed to have been granted to the applicant on the date immediately following the date of expiry of 60 days. In the instant case, we find that the petitioners made an application on 18-8-2018. On that

application, the petitioners were informed by the impugned order/communication dated 19/20-11-2018 that their application itself was not accompanied by several documents.

9. Thus, the permission has been refused on the grounds set out in this communication. The petitioners' argument overlooks sub-section (5) of Section 45 and the provisos thereto. The provisos thereto are very clear and namely that, the development proposal, for which the permission was applied for, should be strictly in conformity with the requirements of all the relevant Development Control Regulations framed under the MRTP Act or Bye-Laws or Regulations framed in this behalf under any law for the time being in force and the same in no way violates either the provisions of any draft or final plan or proposals published by means of notice, submitted for sanction under the MRTP Act. The second proviso is much more important and crucial and that proviso to sub-section (5) says that, any development carried out in pursuance of the deemed permission which is in contravention of the provisions of the first proviso, shall be

deemed to be an unauthorised development for the purposes of Sections 52 to 57.

10. In these petitions there is nothing by which we can deduce or infer that the permission was applied for strictly in conformity with the requirements of all the relevant Development Control Regulations framed under the MRTP Act or Bye-Laws or Regulations so framed in this behalf under any law for the time being in force. The petitions are silent about the permission being sought for an act which in any way violates either the provisions of any draft or final plan or proposals submitted/published by means of a notice, submitted for sanction under the MRTP Act.

11. Pertinently, Exhibit-L, which is the impugned order/communication, informs the petitioners that the permission cannot be granted because the 7 x 12 extract of the property or its copy was not enclosed. The final layout approval copy with order not enclosed. The non-agricultural order and non-assessment tax receipt not attached. The scrutiny fee receipt

not produced and the land under construction is affected by proposed 12 metres x 15 metres wide Development Plan Road. Finally, the title search report not enclosed. This clearly indicates that the proposal for regularisation was not strictly meeting the requirements of the Development Control Regulations or the MRTP Act itself. This permission sought by the petitioners *vide* their regularisation application having been rejected on the above noted grounds, even if after 60 days, the petitioner does not get any benefit of sub-section (5) of Section 45. That provision is not absolute in terms, as is projected before us. It is in these circumstances, we do not find any substance in the contentions of the petitioners' Advocate.

12. This is a clear case where the writ jurisdiction of this Court is grossly abused so as to avoid compliance with the law. We do not think that in writ jurisdiction and given the undertaking of the petitioner-Baban Pandurang Kokate in the first round, we should interfere with the impugned communication. The writ petitions are, therefore, dismissed.

(B.P. COLABAWALLA, J.)

(S.C. DHARMADHIKARI, J.)