

27.8.2019

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5750 OF 2015

Smt. Shalubai Namdev GharatPetitioner

V/s.

1. The Managing Director,

CIDCO and Ors.

....Respondents

Mr. Sanket Thakur a/w. Ms. Sushmita Tandel,
Advocate for the petitioner.

Mrs. M.S. Srivastava, AGP for State-respondents
no.5 to 9.

CORAM : B.P. DHARMADHIKARI, &

SANDEEP K. SHINDE, JJ.

Tuesday, 27th August, 2019.

P.C. :

1. Heard respective Counsel.

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2. The petitioner has come with a prayer to restrain the respondents from taking any action of demolition in furtherance of notice under Section 55(1) of the Maharashtra Regional Town Planning Act ("MRTP Act" for short).

3. The notice claims that, petitioner has raised some temporary structure in violation of the provisions of MRTP Act and is using it for commercial purposes. The petitioner has submitted a reply to it and claimed that he had old residence which has been demolished and a new structure has been raised in its place. The petitioner claims that it is being used for residence only.

4. Learned Counsel argues that, in this situation, as application for regularisation has been preferred, the notice cannot be permitted to be implemented.

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5. Learned Counsel appearing for respondents is opposing the petition. She submits that petitioner himself accepts that structure raised by him is not temporary and has not placed on record any photograph or any plan to show its nature or extent.

6. Notice under Section 55(1) is issued on 22nd November, 2011. Petitioner has submitted reply thereto and sought regularisation on 9th November, 2012. The present writ Petition appears to have been filed sometime in June, 2015.

7. This Court, has on 29th June, 2015 directed parties to maintain status-quo.

8. Thus, the structure raised is standing since last about eight years without any action. Petitioner also has not bothered to disclose all

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necessary facts to this Court regarding extent or nature of construction. It prima-facie appears that on 9th November, 2012 he has only submitted an application running into two pages pointing out that he has erected new structure which is permanent in nature. At the end, he has sought its regularisation. Thus, request for regularisation also does not appear to have been made in terms of Section 44 of MRTP Act.

9. In this situation, as interim orders are operating since last more than four years and structure is in existence since about last eight years, we are inclined to give petitioner one opportunity.

10. Petitioner shall make proper application for regularisation to respondent no.3 with necessary details within four weeks from

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today. If such application is made, respondent no.3 shall take decision upon it in accordance with law within further two months.

11. Interim orders already granted by this Court on 29th June, 2015 shall continue for a period of four weeks from today. If within said period, application for regularisation is moved in accordance with law, interim orders shall continue till decision upon it by respondent no.3 within time stipulated.

12. The interim orders shall be subject to orders of regularisation to be passed by respondent no.3.

13. Petition disposed of accordingly.