

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2021 OF 2018
IN
WRIT PETITION NO. 7885 OF 2010

Jayant Lunawat. ..Applicant.

In the matter between :

Jayant Lunawat. ..Petitioner.

Versus

State of Maharashtra & Others. ..Respondents.

Mr. V. R. Dhond, Senior Advocate with Gulnar Mistry, Rishir Daulat
Priyanka Gidh I/b TRD Associates for the Applicant/Petitioner.

Mrs. M. P. Thakur, AGP for the Respondent-State.

Mr. R. S. Khadapkar for Respondent No. 3 to 5.

Mr. Neel Pungliya for Respondent No. 6 to 15.

Coram : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.

Date : **January 30, 2019.**

P. C. :

1. Heard the learned counsel appearing for the respective parties. This application is filed by the Petitioner seeking direction to the Respondent-Corporation to consider the Petitioner's proposal for compounding of unauthorised structure.

2. On the subject plot of land, the Petitioner has constructed 9 buildings consisting of 240 flats and one club house and the flats have already been sold out. The Respondent-Corporation has cancelled the building permission of the Petitioner on two grounds,

namely, the Petitioner has failed to deliver land/FSI admeasuring 23,000 sq. fts to the original owner as contemplated under the development agreement; and secondly two old structures were not shown on the plan. Subsequently, the Respondent-Corporation has sent notice for demolition. The Petitioner challenged the above notice by filing above writ petition, which is admitted. The demolition notice is stayed at the instance of Respondent No.16. The Petitioner thereafter in pursuance of the scheme enacted by the State Government, namely, the Maharashtra Town Planning (Compounded Structures) Rules, 2017 and Circular dated 6th January 2018 applied to Respondent No.2-Corporation for compounding of the subject structures. This application is rejected by the Respondent-Corporation by the order dated 24th August 2018 on two grounds, namely, the Petitioner has not given two plots of land admeasuring 10,000 sq. fts. to the original owner as agreed under the development agreement and secondly pendency of above writ petition.

3. Mr. Dhond, the learned senior counsel for the Petitioner submitted that so far as the erstwhile owners' entitlement for two plots of land or FSI admeasuring 10,000 sq.fts. is concerned, the dispute is pending in the civil Court. He submitted that the Respondent-Corporation could not have rejected the Petitioner's

application for compounding of the structures under the said scheme of 2017 on the ground of pendency of the writ petition.

4. Mr. Khadapakar, learned counsel for the Respondent-Corporation supported the impugned order and submitted that no interference is required.

5. Having considered rival submissions, we find merit in the application. The Respondent-Corporation by giving notice has already cancelled building plans of the Petitioner. The subject structures have thus rendered unauthorised, and therefore the Petitioner is very much within his rights to make an application for compounding / regularisation of the said unauthorised structures in pursuance of Maharashtra Town Planning (Compounded Structures) Rules, 2017.

6. The Respondent-Corporation could not have rejected / refused to entertain this application on the ground of pendency of writ petition. We find that there is no stay granted by this Court to the order cancelling the Petitioner's development plan, and therefore, it is not open to the Respondent-Corporation to refuse to entertain the application on the ground of pendency of writ petition. In our opinion, the Respondent-Corporation is obliged to decide the said application on merits.

7. In the light of above, we allow this civil application and quash and set aside the order dated 24th Augsut 2018 passed by Respondent No.2. We direct the Respondent-Corporation to decide the Petitioner's application for compounding / regularisation dated 17th July 2018 [copy of which is annexed at Exhibit-D to the petition] on merits. The Respondent-Corporation shall decide the said application as expeditiously as possible and preferably within the period of 12 weeks from the date of receipt of a copy of this order. Needless to state that this order should not be construed as an expression of any opinion on merits of the matter. All points and contentions of the respective parties are kept open. The said application shall be decided on its own merits and in accordance with law. While deciding the said application, the Respondent-Corporation shall hear all concerned parties, including Respondent No. 6 to 15.

8. Civil application stands disposed of.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]