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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10011 OF 2019**

Dhanraj Nathuram Aswani & Anr	...Petitioners
<i>Versus</i>	
The Chief Executive Officer, Pimpri Chinchwad New Town Development Authority	...Respondent

Mr AP Kulkarni, for the Petitioner.

Mr Rohit Sakhdeo, for the Respondent.

**CORAM: S. C. DHARMADHIKARI &
G.S. PATEL, JJ
DATED: 16th September 2019**

PC:-

1. Leave to amend. Amendment be carried out within one week from today.
2. Heard both sides on the point of urgency.
3. Since the urgency complained of is that though the notice in question and challenged in this petition dated 9th September 2019 is under Section 53(1) of the Maharashtra Regional and Town Planning Act 1966, the Municipal Corporation/Planning Authority threatens that the structure will be demolished within 24 hours, thus taking away the opportunity to make an application under sub-

section (3) of Section 53 of the Maharashtra Regional and Town Planning Act 1966 (“**MRTP Act**”).

4. On this limited point, we have heard both sides. Mr Sakhdeo appearing on behalf of the Municipal Corporation/Planning Authority states that the petitioner is seeking to do something which is *ex facie* impermissible given the mandate of the MRTP Act, the Maharashtra Provincial Municipal Corporations Act 1949 (now the Maharashtra Municipal Corporations Act, 1949) and the provisions of the Development Control Regulations.

5. The argument, therefore, is that no permission could have been ever granted. The shop, therefore, must be permitted to be removed.

6. We have carefully perused the impugned notice. It is traceable to sub-section (1) of Section 53 of the MRTP Act. It says that one Dhanraj Awani constructed Shop No. 3 on Plot No. 23, Chikhli CDC. This is within the limits of the Municipal Corporation/Planning Authority. Hitherto, the Pimpri Chinchwad New Town Development Authority was the Planning Authority, but by a notification dated 13th September 2019 that power of a planning authority is now to be exercised by the successor Municipal Corporation known as Pimpri Chinchwad Municipal Corporation.

7. The notice itself says that the construction attracts Section 52 of the Maharashtra Regional and Town Planning Act 1966, and that

is why the offending structure/construction must be removed within 24 hours from the date of receipt of the notice.

8. Section 53 of the Maharashtra Regional and Town Planning Act 1966 reads as under:

“53. Power to require removal of unauthorised development.

(1) (a) Where any development of land has been carried out as indicated in clause (a) or (c) of sub-section (1) of section 52, the Planning Authority may, subject to the provisions of this section, serve on the owner, developer or occupier a prior notice of 24 hours requiring him to restore the land to conditions existing before the said development took place;

(b) if the owner, developer or occupier fails to restore the land accordingly, the Planning Authority shall immediately take steps to demolish such development and seal the machinery and materials used or being used therefor.

(1A) Where any development of land has been carried out as indicated in clause (b) or (d) of sub-section (1) of section 52, the Planning Authority may, subject to the provisions of this section, serve one month's notice on the owner, developer or occupier requiring him to take necessary steps as specified in the notice.

(2) In particular, such notice may, for purpose of sub-section (1), require—

(a) the demolition or alteration of any building or works;

(b) the carrying out on land of any building or other operations; or

(c) the discontinuance of any use of land.

(3) Any person aggrieved by such notice may, within the period specified in the notice and in the manner prescribed, apply for permission under section 44 for retention on the land of any building or works or for the continuance of any use of the land, to which the notice relates, and pending the final determination or withdrawal of the application, the mere notice itself shall not affect the retention of buildings or works or the continuance of such use.

(4) The foregoing provisions of this Chapter shall, so far as may be applicable, apply to an application made under sub-section (2).

(5) If the permission applied for is granted, the notice shall stand withdrawn; but if the permission applied for is not granted, the notice shall stand; or if such permission is granted for the retention only of some buildings, or works., or for the continuance of use of only a part of the land, the notice shall stand withdrawn as respects such buildings or works or such part of the land, but shall stand as respects other buildings or works or other parts of the land, as the case may be, and thereupon, the owner shall be required to take steps specified in the notice under sub-section (1) as respects such other buildings, works or part of the land.

(6) If within the period specified in the notice or within the same period after the disposal of the application under sub-section (4), the notice or so much of it as stands is not complied with, the Planning Authority may—

(a) prosecute the owner for not complying with the notice; and where the notice requires the

discontinuance of any use of land any other person also who uses the land or causes or permits the land to be used in contravention of the notice; and

(b) where the notice requires to demolition or alteration of any building or works or carrying out of any building or other operations, itself cause the restoration of the land to its condition before the development took place and secure compliance with the conditions of the permission or with the permission as modified by taking such steps as the Planning Authority may consider necessary including demolition or alteration of any building or works or carrying out of any building or other operations; and recover the amount of any expenses incurred by it in this behalf from the owner as arrears of land revenue.

(7) Any person prosecuted under clause (a) of sub-section (6) shall, on conviction, be punished with imprisonment for a term which shall not be less than one month but which may extend to three years and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees, and in the case of a continuing offence with a further daily fine which may extend to two hundred rupees for every day during which such offence continues after conviction for the first commission of the offence.

(8) The Planning Authority shall, by notification in the Official Gazette, designate an officer of the Planning Authority to be the Designated Officer for the purposes of exercise of the powers of the Planning Authority under this section and sections 54, 55 and 56. The Designated Officer shall have jurisdiction over such local area as may be

specified in the notification and different officers may be designated for different local areas.”

9. A perusal of the entire section would reveal that not only the section but the sub-sections and parts of sub-sections have to be read together and harmoniously. So read, the Municipal Corporation could not have directed removal of the structure within 24 hours, thereby taking away every opportunity of the petitioner to adopt legal proceedings or to apply for retention of the structure at site. By the notice itself, there is no adjudication with regard to the legality and validity of the structure or construction carried out at site. It is but a notice and nothing more, and after that notice the law has to take its course. The law allows the parties like the petitioner to seek retention of the works at site, and if the law also says that until such application is decided, the works should not be touched but permitted to be retained, then, by the process undertaken and threatened in the notice the Municipal Corporation or the Planning Authority cannot reduce this statutory provision to a dead letter.

10. In these circumstances, interest of justice would be served if we pass the following order:

- (a) The petitioner can make an application under sub-section (3) of Section 53 of the Maharashtra Regional and Town Planning Act 1966 within ten days from today;
- (b) On such an application being made and received by the Municipal Corporation/ Planning Authority, it shall

pass the requisite orders thereon as expeditiously as possible and within two weeks from the date of receipt of the same;

- (c) Should the petitioner's application stand rejected, then the petitioner is free to approach the appellate authority by invoking Section 47 of the Maharashtra Regional and Town Planning Act 1966.

11. We clarify that we have not expressed any opinion on the merits of the rival contentions. All of them are expressly kept open.

12. We quite appreciate the stand taken by the Municipal Corporation in this case and its reliance on an unreported order of this Court in Civil Writ Petition No. 3351 of 2018 with Civil Application No. 2030 of 2019 decided on 29th August 2019. That judgment only reiterates the legal position as was prevailing. By the judgment all that is emphasized is that the application under subsection (3) of Section 53 of the MRTP Act has to be dealt with as if the application had sought an initial permission traceable to Section 44 of the Maharashtra Regional and Town Planning Act 1966. The application for retention will have to be decided applying the same parameters. This is also obvious from the legislative intent. The judgment but reiterates this position and does not lay down anything by which we would be prevented from issuing the above direction.

13. The writ petition is disposed of in these terms.

14. The affidavit filed by the Corporation is taken on record.

15. Needless to clarify that until the application under Section 53(3) of the Maharashtra Regional and Town Planning Act 1966 is decided, and, should the result of that decision be adverse to the petitioner, for a period of two weeks thereafter, no coercive steps be taken by the Municipal Corporation in pursuance of the said notice.

(S. C. DHARMADHIKARI, J)

(G. S. PATEL, J)