

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. NO. 8124/2019

(KAMLESH MAHESH SONI **VERSUS** THE STATE OF MAHARASHTRA & OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.R. Deshpande, counsel for petitioner.
Ms H.N. Prabhu, A.G.P. for R-1.
Shri J.B. Kasat, counsel for R-2 & 3.

CORAM : A.S. CHANDURKAR, J.

DATE : DECEMBER 13, 2019.

The challenge raised in the present writ petition is to the order dated 07.11.2019 passed under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 (for short, 'the said Act').

According to the petitioner on 11.09.2019, the Assistant Commissioner issued a notice to the petitioner calling upon him to furnish relevant documents to indicate that the construction in question was carried out on the basis of valid permission. The petitioner on 15.10.2019 submitted various documents including the sanctioned plan. On 07.11.2019, the Assistant Commissioner passed an order stating therein that on 02.11.2019 the site in question was inspected and it was noticed that the construction undertaken was not in accordance with the sanctioned plan. Hence, the petitioner was directed to demolish the unauthorized construction and also stop the unauthorized user of the land in question. Thereafter on 03.12.2019, the petitioner issued a letter seeking to submit a copy of a revised building plan with the Assistant Director of Town Planning. The same was accordingly submitted on 06.12.2019 to the Assistant Director of

Town Planning. The petitioner also filed an appeal before the Municipal Commissioner challenging the notice/order dated 07.11.2019. Since the proceedings were not entertained the order dated 07.11.2019 directing the petitioner to remove the construction in question is under challenge.

According to Shri J.B. Kasat, learned counsel for the respondent no.2 and 3, after the notice under Section 53(1) of the said Act was issued the petitioners had submitted the revised building plan on 06.12.2019 and the same was required to be considered in accordance with Section 44 of the said Act. This application is required to be considered within a period of sixty days as provided by Section 45(5) of the said Act. He therefore submits that at this stage, the revised building plan is being considered by the Competent Authority and hence, the apprehension expressed by the petitioner is unfounded.

It is seen that pursuant to the order passed under Section 53(1) of the said Act, the petitioner has submitted a revised building plan which would be considered by the Planning Authority. As per the provisions of Section 53(3) of the said Act, until the application in question moved by the petitioner under Section 44 of the said Act is decided the earlier notice issued under Section 53(1) of the said Act would not effect retention of the building or the works or the continuance of such use. In view thereof, at this stage the apprehension of the petitioner is taken care of. The respondent nos.2 and 3 are free to decide the request as made by the petitioner by submitting revised building plan in accordance with law. After that decision is taken and communicated, no further steps be taken against the construction in question for a period of three weeks from the date of that order.

With these observations, the writ petition is disposed of.

No costs.

JUDGE

APTE