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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 102 OF 2020

Ravindra Narayan Jagtap & Ors.

...Petitioners

vs

Designated Officer, Office of Diva Prabhag
Samitee, T.M.C. & Ors.

...Respondents

.....

Mr. Shriram S. Kulkarni for the Petitioners.

Mr. Ram Apte Sr. Adv. a/w A.R.Pitale for Respondent Nos.1 and 2.

Ms. Ashwini A. Purav for Respondent No.3.

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**CORAM : S. J. KATHAWALLA &
B. P. COLABAWALLA, JJ.**

DATED 8th JANUARY, 2020.

P.C. :

1. The above Writ Petition is filed by the Petitioners claiming following
reliefs :

“(a) That this Court be pleased to hold and declare that the Respondent Corporation is under the statutory obligation to decide as to whether the structures referred in para 3 to 12 of the Petition are compoundable structures within the meaning of amended provisions of MRTP Act and until then, the Corporation has no right to take any coercive action for demolishing the said structures in view of the communication dated 04.01.2020 issued by Respondent No.1 in respect of the said structures.

(b) That this Court further be pleased to direct Respondent No.1 to examine and to consider the case of the Petitioner under the provisions of Maharashtra Act No. XXXII of 2017 for declaring the structure as a ‘compounded structure’ u/s 2(5A) r/w Section 52A, 53 of the MRTP Act, 1966 and until then no coercive steps should be taken against the subject matter of the present Petition.”

2. Admittedly the structures are unauthorized for which a notice was issued to the Petitioners as far back as on 16th February, 2018. The reply placed before us is dated 27.2.2018 wherein, whilst admitting that the structures were unauthorized, it was stated in paragraph 7 that the Petitioners are in the process of applying for regularization of the said building structure. In paragraph 9 of the reply, it is stated that the Municipal Corporation should consider their reply as an application for regularization of the said building structure under Section 52A of the Maharashtra Regional and Town Planning Act, 1966 (for short “MRTP Act”).

3 The learned Advocate appearing for the Municipal Corporation has correctly submitted that under no circumstances, the contents in the reply could have been treated as a Regularization Application since the Regularization Application needs necessary plans to be attached showing the area and only thereafter a final order can be passed. The Petitioners were aware about this fact, and therefore, in paragraph 7 of the reply, the Petitioners have stated that they are in the process of applying for regularization of the said building structure.

4 We must mention that the owners of the land (on which the unauthorized structure is situate) filed Writ Petition No.995 of 2017 before this Court when an order dated 5.3.2018 was passed which reads as under :-

“1. *Perused the affidavit of Shri Ashok C. Burpulle, Deputy Commissioner, Encroachment Control and Removal Department of Thane Municipal Corporation. Paragraph 2 of the said affidavit states that the Municipal*

Commissioner directed the said officer to take steps in terms of the order dated 15th February, 2018. The affidavit records that 410 notices under sub-sections 1 and 2 of section 260 of the Maharashtra Municipal Corporation Act, 1949 have been issued to 410 occupants. It is proposed to give hearing to the occupants from 5th March 2018 to 9th March, 2018.

2. *In view of the statements made in the affidavit, we adjourn this petition till 27th March, 2018. To be listed under the caption of "Fresh Admission." The affidavit setting out the action taken on the basis of the said notices shall be filed on or before 24th April, 2018."*

5 Pursuant to the said order the Municipal Corporation heard all the 410 occupants of the unauthorized structures including the Petitioners and after considering their reply, passed the order dated 15.4.2018. This order was served on the Petitioners. The Petitioners were, therefore, aware that the reply submitted by them to the Show Cause Notice is rejected including their purported request for regularizing the structure under Section 52A of the MRTP Act as far back as on 15.4.2018 and they were called upon to vacate the premises within 15 days from 15.4.2018.

6 Thereafter, Writ Petition No. 995 of 2017 came up before this Court on 3.1.2020, when this Court directed the Thane Municipal Corporation to file its Affidavit setting out the steps taken in compliance of the Order dated 5th March, 2018. Thereafter, the Municipal Corporation started demolishing the unauthorized structures. When the Municipal Corporation started demolishing the structures the above Writ Petition was filed on 7.1.2020 i.e. Yesterday, that is

about 1 ½ years from the date of receipt of the order dated 15.4.2018 by the Petitioners and that too without impugning the said order. Despite this, the Petitioners are now praying for directions against the Municipal Corporation to decide whether the structures of the Petitioners are compoundable structures. Although all steps are taken by the Municipal Corporation against the unauthorized structures and to comply with the orders of the Court, this is the manner in which the Petitioners seek to thwart the orders of the Court. Such an exercise cannot be allowed. Even otherwise, we do not find that justice is on the side of the Petitioners for us to exercise our extraordinary powers under Article 226 of the Constitution of India and interfere with the earlier orders passed by this Court and the steps taken by the Municipal Corporation and prevent demolition at such a belated stage. The Writ Petition is, therefore, dismissed. No order as to costs.

(B. P. COLABAWALLA, J.)

(S. J. KATHAWALLA, J.)