

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3217 OF 2018

Sardar Rajendrasingh Ujagarsingh ... Petitioner.

V/s.

Pimpari Chinchwad Municipal Corporation,
Pimpari & 6 Ors. ... Respondents.

Mr. Vinod Sangvikar, Advocate for the Petitioner.
Mr. Deepak R. More, Advocate, a/with Shivram A.
Gawade, Advocate for Respondent Nos. 1 to 3.
Ms. Kanchan C. Pathak, Advocate h/ for Mr. Nitin P
Deshpande, Advocate for the Respondent Nos. 6 & 7.

CORAM : A.A.SAYED & S.G.DIGE,JJ.

DATE : SEPTEMBER 22, 2021.

P.C. :

1 The Petitioner, who is an occupant of a flat, is seeking the following reliefs in the Petition :

(a) That this Hon'ble Court may be pleased to direct the Respondent No. 1 & 3 to carry out demolition of the illegal and unauthorized construction carried out by the Respondent No. 6 & 7 and Respondent No. 4 may be directed to provide police protection for the purpose of demolition;

Digitally signed
by
SHALIKRAM
PRALHADRAO
BOREY
Date:
2021.09.28
14:47:54
+0530

(b) That this Hon'ble Court be pleased to issue writ of mandamus, or a writ, order or direction, thereby directing the Respondent No. 1 & 3 to take further follow up action in pursuant to their complaint at Exhibit "B" (Coly) send to the Respondent No. 1 to 3;

(c) This Hon'ble Court be pleased to issue writ of mandamus or a writ or direction, thereby directing the Respondent No. 1 to take action against the Respondent No. 2 and 3 as per Sec. 56A of M.R.T.P. Act, 1966;

2 An Affidavit-in-Reply is filed on behalf of the Respondent-Corporation. Paragraph 5 of the said Affidavit-in-Reply reads as follows :

"(5) I say that during the pendency of the present Petition the Developer applied for NOC from the Railway Authorities for allowing the construction within the set back area i.e. land admeasuring 30 meters from the railway property. I say that the Railway Authorities after examining the proposal/ application so submitted by the Developer for seeking its NOC for undertaking construction in a set back area, issued the NOC. I say that on the basis of such a NOC issued by the Railway Authorities the development permission / retention permission of the structure in question, was applied for by the said Developer through its authorized signatories and registered L.

Architect. I say that after receipt of the said proposal for retention/ regularization of unauthorized structure as specifically provided and contemplated in section 52-A of the MRTP Act, 1966, the same was scrutinized. I say that after having noticed the said proposal to be in conformity with the Development Control Regulations and the provisions of the MRTP Act, 1966, the Development Permission has been granted to the Respondent Nos. 6 and 7. I say that the provisions of section 52-A of the MRTP Act, 1966, were challenged before this Hon'ble Court by way of filing PIL No.80 of 2013. I say that the said PIL has been disposed of by this Hon'ble Court by delivering the detailed judgment laying down certain tests. I say that the said structure qualifies the tests laid down by this Hon'ble Court in case as reported in (2019) 1 Bombay Case Reporter 479, in PIL No. 80 of 2013 for grant of development permission/ retention permissions as contemplated under section 52-A of the MRTP Act, 1966. I say that the proposal so submitted by the Developer once having found in conformity with the Development Control Regulations and the provisions of law the Corporation has issued necessary development permission on 26.07.2021. Annexed hereto and marked as Exhibit A is a true copy of the said development permission dated 26.07.2021 granted by the Corporation. I say that taking into consideration the provisions of section 52A of the MRTP Act, 1966, even the prosecution initiated as against

the Respondent Nos. 6 and 7 cannot be continued. I say that structure in question being capable of being regularized under the provisions of the said Act, the necessary permission has been granted for the same. I say that in view of the aforesaid factual position the relief so prayer for cannot be considered and the Petition deserves to be dismissed with costs.”

(emphasis supplied)

3 Since the Respondent-Corporation has granted necessary development permission to the Respondent Nos. 6 and 7, no relief as prayed can be granted to the Petitioner.

4 Leaving the remedies of the Petitioner open, we dismiss the Petition.

(S.G.DIGE, J.)

(A.A. SAYED, J.)

.....