

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1095 OF 2021

Venugopal Venkatesh Torvi & Others. ..Petitioners.

Versus

Divisional Commissioner, Kokan Division
and Others. ..Respondents.

WITH

WRIT PETITION NO. 2351 OF 2022

Sujay Construction & Others. ..Petitioners.

Versus

State of Maharashtra and Others. ..Respondents.

Mr. Rajesh S. Datar i/b Mr. Akshay J. Kandarkar for the Petitioner in
Writ Petition No. 2351 of 2022 and Respondent No.5 in Writ Petition
No. 1095 of 2021.

Ms. Chaitali Bhogle i/b VMK Legal for Respondent No. 6 in Writ
Petition No. 2351 of 2022.

Mr. A. P. Vanarase, AGP for State.

CORAM : NITIN JAMDAR &
SHARMILA U. DESHUMKH, JJ.

DATE : 10 November 2022.

P.C. :

Heard learned counsel for the parties.

2. Writ Petition No.1095 of 2021 is filed by 8 Petitioners
who claim to be the residents of building Lakshminarayankrupa situated
at Gat No.38 and 39, Plot No.89A and 89B at village Kalambhe,

Shahapur, district Thane. They have sought to set aside the notice issued by Respondent no.4 Tahsildar on 5 February 2021 to the extent of regularisation / demolition of the residential flats in the building. They have also sought to restrain Respondent Nos.1 to 4–Authorities from taking any action in respect of the residential flats. They have also sought a direction against Respondent no.5 that First Information Report should be registered against Respondent No.5 for unauthorised construction of shops at ground floor and basement situated in the said building.

3. Writ Petition No.2351 of 2022 is filed by one Sujay Construction through its partner and another and shop-owners of the ground floor seeking to quash and set aside the notices dated 5 February 2021 and 11 February 2022 issued by the Tahsildar, Shahapur and the Sub Divisional Officer, Bhiwandi. These petitioners have also sought direction that their applications for regularisation be decided and the Respondent–Authorities be restrained from acting in furtherance of the impugned notices issued.

4. What emerges before us is a dispute where the flat owners of building Lakshminarayankrupa are objecting to the legality of structure and shops on the ground floor and basement. According to the petitioners in Writ Petition No.1905 of 2021, these structures are illegal and ought not to be regularised. The petitioners in Writ Petition

No.2351 of 2022 are seeking regularisation of these structures. These petitions are pending since the year 2021. Interim orders have been passed that action should not be taken as regards the demolition.

5. As regards the pendency of applications made for regularisation, learned AGP states that in spite of giving opportunities to the Petitioners in Writ Petition No.2351 of 2021 to complete the formalities for processing the regularisation applications, these Petitioners are not coming forth and therefore no decision has been taken. Learned counsel for the Petitioners in Writ Petition No.2351 of 2022 states that all compliance and requirements for processing regularisation applications have been made and the measurement is also carried out. Learned counsel, on instructions, states that whatever compliance for processing the regularisation applications, as informed by the State Authorities, would be done within the period of three weeks from today. Learned AGP states that in the light of this statement, the pending applications would be decided as per law.

6. Since the issue has been raised by the Petitioners in Writ Petition No.1095 of 2021, while the concerned authorities will decide the regularisation applications, these petitioners should be given opportunity to put forth their say. The concerned authorities will also look into the say of petitioners in Writ Petition No.1095 of 2021 and decide the pending applications, i.e., of Petitioners in Writ Petition No.

2351 of 2022 and of the Petitioners in Writ Petition No.1095 of 2021 (if any), and pass a speaking order. After the order is so passed, the parties will have remedies in law open to them. We make it clear that by direction to decide the pending applications, we have not commented on the merits of regularisation applications and the same will be considered strictly as per the applicable rules and regulations. Subject to earlier time bound commitments and workload, the concerned authorities will decide these applications and pass speaking order within the period of three months. The writ petitions are accordingly disposed of.

7. Since the applications for regularisation will be decided on their own merits within the above mentioned period, it is implied that till such order is passed the coercive action will not be taken.

(SHARMILA U. DESHMUKH, J.)

(NITIN JAMDAR, J.)