

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**WRIT PETITION NO. 5044 OF 2022**

Rekha Nishant Karande & Anr. ...Petitioners.  
Versus  
The State of Maharashtra & Ors. ..Respondents.

Mr. Surel S. Shah i/by Mr. Prashant Darandale, Advocate for the petitioners.  
Mr. V. S. Gokhale, B Panel Counsel (AGP) for Respondent Nos.1, 3 & 4 – State.  
Ms. Shakuntala S. Wadekar, Advocate for Respondent No.2.

CORAM : PRASANNA B. VARALE &  
SHRIKANT D. KULKARNI, JJ.

**Date : July 6, 2022.**

P. C. :

1. Heard learned counsel appearing on behalf of the Petitioner, learned counsel appearing on behalf of respondents nos.1, 3 and 4 as well as learned counsel appearing on behalf of Respondent no.2 – Chakan Municipal Council.

2. The petition was listed before this Court on 5<sup>th</sup> April 2022. The Division Bench of this Court referred to the challenge raised in the writ petition and issued notice to the respondents. It was also observed in the order dated 5<sup>th</sup> April 2022 *“the counsel on instructions submitted that the petitioner undertakes to file an application for regularisation under the Gunthewari within one week from today. The statement is*

*accepted as an undertaking to the Court.”* Then an order was passed by this Court on 22<sup>nd</sup> June 2022. The matter was mentioned before this Court on 30<sup>th</sup> June 2022 and office was directed to list the matter on 6<sup>th</sup> July 2022, i.e., today.

3. Respondent no.2 – Municipal Council, Chakan issued notice to Petitioner no.1 – Rekha Nishant Karande, copy of which is placed on record at Exhibit-B (page no.46) to the petition. Perusal of the same shows that the addressee is referred to as *“Sou. Rekha Nishant Karande and two others”*. It is stated in the notice that a complaint is received by the municipal council and it was stated in the complaint that one Shri. Ramesh Wadekar and other members of Gurudevdattha Housing Society, without obtaining permission from any competent authority or without seeking regularisation of gunthewari, have erected constructions for residential use as well as for commercial use. It is further stated in the notice that an earlier communication was forwarded to the addressee on 18<sup>th</sup> May 2021 and in response to the communication reply was submitted on 6<sup>th</sup> July 2021. It is stated in the communication that no necessary documents in the form of permission was submitted to Respondent No.2 along with reply dated 6<sup>th</sup> July 2021. As such, a preliminary opinion was formed by Respondent no.2-municipal council that construction carried out by the addressee is without seeking any

permission and the addressees were informed either to submit necessary proposal or to remove the construction within 30 days. Being aggrieved by this communication, the Petitioners are before this Court.

4. An affidavit-in-reply is filed by Respondent no.2 -municipal council through its chief officer. It is stated in the affidavit-in-reply that on receipt of complaint, a spot *panchanama* was drawn on 6<sup>th</sup> July 2021 and notice was issued to Petitioner no.1. It is further stated in the affidavit-in-reply that in response to the notice dated 2<sup>nd</sup> August 2021, a reply was filed on behalf of Petitioner No.1 on 27<sup>th</sup> August 2021. Copy of the reply is also annexed to the affidavit-in-reply at Exhibit-B. Perusal of the reply of Petitioner No.1 shows that Petitioner No.1 informed Respondent No.2 that she is not the owner of subject matter in the notice. It is further informed by Petitioner No.1 that she she is not the owner of property, as such she cannot exercise any right over the property nor she can take any decision in respect of the said property. It is then submitted in the reply that Respondent no.1 had issued notice to her on an incorrect opinion. Then, it is further stated in the reply that as the notice is issued to Petitioner No.1 on an incorrect opinion, Petitioner No.1 was subjected to some inconvenience and the notice be withdrawn or be recalled.

5. Learned counsel appearing on behalf of Respondent No.2 was justified in making submission before this Court that though the reply refers to so many statements, Petitioner No.1 failed to make a simple statement to the effect who is the owner of said property. If such a statement would have been made in the reply given by Petitioner No.1, Respondent no.2-municipal council could have initiated some exchange of communication with the owner of property. But as there was no specific material for the municipal council to know who is the owner of premises and as Petitioner No.1 was occupying the said premises so also as her name-plate (board) was affixed on the premises, Respondent No.2 was left with no choice but to forward the communication to Petitioner No.1, firstly by way of notice dated 2<sup>nd</sup> August 2021 and secondly by another notice dated 2<sup>nd</sup> February 2022.

6. From the perusal of affidavit-in-reply, it is revealed that after second notice and pursuant to the order of this Court, the owner of premises–Shri. Tukaram Sadashiv Karande through a firm Nirmiti Architects and Associates, on 11<sup>th</sup> April 2022 submitted an application to the Chief Officer of Chakan Municipal Council for regularisation. The necessary details are referred to in the application, such as the name of owner, details of property, area of property, construction in property etc. It is also mentioned in the application that present writ petition is filed in

this Court. In the affidavit-in-reply filed on behalf of Respondent no.2, following statement is made :

“..... I say that, pending the petition, the Petitioner no.2 filed an Application on 11.04.2022 for regularisation of the disputed unauthorized construction under the Maharashtra Gunthewari Development (regularisation, upgradation and control) Act, 2001, and the same is been replied by the Respondent no.2 vide Reply dated 21.04.2022. The Respondent no.2 has clearly stated that, very soon the process will be completed in respect of the regularisation of unauthorised construction under the Gunthewari Act and thereafter Petitioner No.2 may make an application with all relevant documents for regularisation of unauthorised construction under the provisions of the Gunthewari Act.....”

[emphasis supplied.]

7. By accepting above statements made on behalf of Respondent No.2, we are of the opinion that no further order is required to be passed in this petition. It can be safely said that the purpose of approaching this Court is duly served. The grievance raised in the petition no more survives. The petition is accordingly *disposed of*.

8. As the Petitioner was protected by an interim order, Respondent No.2 shall not take any coercive step till the application for regularisation is decided.

**[Shrikant D. Kulkarni, J.]**

**[Prasanna B. Varale, J.]**