

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

WRIT PETITION NO.9989 OF 2022

Pratik Bapurao Anivase

.. Petitioner

v/s.

The State of Maharashtra & Anr.

.. Respondents

Mr. Ranjit D. Shinde for the petitioner.

Mrs. Neha Bhide – ‘B’ Panel Counsel for respondent no.1-State.

Mr. Rishikesh M. Pethe for the respondent nos.2 & 3.

CORAM : R.D. DHANUKA &

KAMAL KHATA, JJ.

DATED : 22ND AUGUST, 2022.

P.C. :

1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks writ of mandamus against respondent no.1 to decide the representation dated 11th May, 2021 made by the respondent no.2-Municipal Corporation seeking necessary clarification / guidance in respect of the UDCPR and for quashing and setting aside the demolition notice dated 2nd August, 2022 issued by the Municipal Corporation to the petitioner.

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2. It is the case of the petitioner more particularly stated in paragraph 1 of the petition that the petitioner carries on the business of a dairy farm in the name and style of “Anivase Dairy” and also vegetable vendor at Survey no.11/3, D.P. Road, Karvenagar, Pune.
3. The Municipal Corporation has issued a notice under Section 53(1) of the Maharashtra Regional and Town Planning Act on 2nd August, 2022 calling upon the petitioner to remove the offending structure admeasuring 50 X 50 meter tin shed constructed by the petitioner in the Green Belt and falling between the Blue Line and Red Line under DCPR-2017.
4. Learned counsel for the petitioner vehemently urged before this Court that the petitioner has been using the offending structure for agricultural use. There are number of buffaloes kept by the petitioner in the offending structure. He invited our attention to the Regulation 7.1 of the Development Control Rules dated 5th January, 1987 and submitted that since the petitioner has been carrying out the business of agriculture including stabling of cattle and buffaloes upto the limit of 10 animals per hectare since last several years, the petitioner is entitled to use additional FSI. He submits that the Municipal Corporation has sought clarification

from the State Government as to the extent of use of FSI permissible in Green Zone.

5. Learned counsel for the Municipal Corporation on the other hand, invited our attention to the notice dated 2nd August, 2022 and submitted that the petitioner has not been using the offending structure for agricultural use or stabling of cattle and buffaloes as sought to be canvassed by the learned counsel for the petitioner. He submits that, in any event, in the DCPR-2017 for Pune Municipal Corporation, under Regulation 16.8.1 the user permitted under clause 7.1 of Development Control Rules, 1987 is not found as one of the permissible uses. Learned counsel also placed reliance on the photographs for consideration of this Court and submitted that the photographs would clearly indicate that a so called vegetable vendor is using the premises admeasuring 50 X 50 meter and does not indicate any presence of buffaloes or the petitioner carrying out any business of agriculture in the said offending structure. It is submitted that in any event, the petitioner cannot seek advantage of the user prescribed under Regulation 7.1 of the Development Control Rules, 1987.

6. Learned counsel for the petitioner could not produce any record to show that the petitioner was carrying out any business of

agriculture or dairy. Be that as it may, the learned counsel for the petitioner does not dispute that the objections were not raised by the petitioner while the DCPR-2017 were issued by the State Government. He also does not dispute that the user permissible under Regulation 7.1 of the Development Control Rules, 1987 is not permissible under Regulation 16.8.1 of the DCPR-2017.

7. In our view, since the use of the offending structure does not fall under any of the permissible user under Regulation 16.8.1 or 4.12 of DCPR-2020, the Municipal Corporation is right in issuing notice under Section 53(1)(a) of the MRTP Act. We do not find any infirmity in the notice issued by the Municipal Corporation. Petition is devoid of merit and is accordingly dismissed.

8. Municipal Corporation is directed to execute the notice issued by the Municipal Corporation expeditiously.

(KAMAL KHATA, J.)

(R.D.DHANUKA, J.)