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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

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Date: 2022.11.22
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WRIT PETITION (LODGING) NO.18516 OF 2022

Vaibhav Co-op. Hsg. Soc. Ltd.

...Petitioner

V/s.

State of Maharashtra & Ors.

...Respondents

WITH
WRIT PETITION NO.3190 OF 2019
WITH
INTERIM APPLICATION NO.2154 OF 2022
WITH
INTERIM APPLICATION (LODGING) NO.1663 OF 2022

Mohd. Afsar M.A. Sayed

...Petitioner

V/s.

Municipal Corporation for Gr. Mumbai & Ors.

...Respondents

AND
CHAMBER SUMMONS NO.219 OF 2019
IN
WRIT PETITION NO.3190 OF 2019

Vaibhav Co-op. Hsg. Soc. Ltd.

...Applicant /

...Intervenor

IN THE MATTER BETWEEN :

Mohd. Afsar M.A. Sayed

...Petitioner

V/s.

Municipal Corporation for Gr. Mumbai & Ors.

...Respondents

Mr.Karl Tamboly i/b Ms.Mona D. Vyas for the Petitioner in WP No.3190 of 2019 and for the Respondent No.6 in WP (L) No.18516 of 2022.

Ms.Deepa Panickar i/b Mr.Mohd.Saeed A. Moghul for the Petitioner in WP (L) No.18516 of 2022.

Mr.Shamrao B. Gore, AGP for the State – Respondent No.1 in WP (L) No.18516 of 2022.

Ms.Vaishali Choudhary with Mr.Kunal Waghmare i/b Mr.Sunil Sonawane for the Respondent Nos.2 to 4 in WP (L) No.18516 of 2022 and for the Respondent Nos.1 and 2 in WP No.3190 of 2019.

Mr.Sandesh Patil for SRA - Respondent No.3 in WP No.3190 of 2019.

CORAM : R.D. DHANUKA &
KAMAL KHATA, JJ.
DATE : 16TH NOVEMBER, 2022.

P.C. :-

1. The Writ Petition No.3190 of 2019 is filed by the petitioner *inter-alia* praying for a writ of mandamus to direct the respondents to process the proposal of regularization submitted by the petitioner on merit. The Writ Petition (Lodging) No.18516 of 2022 is filed by the petitioner society *inter-alia* praying for a writ of mandamus against the Municipal Corporation to forthwith take necessary action of demolition in respect of illegal construction in the premises situated at flat no.141, on 14th Floor, of the petitioner society.

2. It is the case of the petitioner society that the respondent no.6 (petitioner in Writ Petition No.3190 of 2019) has approached this Court and stated that in front of open space of flat no.141 on 14th floor, the respondent no.6 has done illegal construction. According to

the petitioner society, though on the complaint made to the respondent Municipal Corporation to take action as per law, a notice under section 53(1) of the MRTP Act was issued on 5th August, 2017 to the respondent no.6, no action has been taken in furtherance of the said notice dated 5th August, 2017 against the respondent no.6.

3. Per contra, it is the case of the respondent no.6 (petitioner in Writ Petition No.3190 of 2019) that the predecessor-in-title of the respondent no.6 had applied for regularization of the said portion, which according to the Municipal Corporation was allegedly encroached upon by the predecessor-in-title of the respondent no.6 or the respondent no.6, as the case may be. The said application for regularization was allowed according to the respondent no.6 by the Municipal Corporation.

4. The respondent no.6 however, had filed a Writ Petition No.2582 of 2017 before this Court, inter-alia impugning the notice dated 5th August, 2017 issued by the Municipal Corporation under section 53 (1) of the MRTP Act. By an order dated 21st February, 2018, a Division Bench of this Court after recording the statement made by the respondent no.6 herein that he had agreed to make an application for regularization under section 44 of the MRTP Act observed that the respondent no.6 had admitted that the work which was the subject matter of the notice was accepted by him as illegal.

This Court accordingly granted liberty to the respondent no.6 to apply for regularization within a period of six weeks from the date of the said order and directed the Municipal Corporation to decide this application within 60 days from the date of the said application. This Court directed that in the meanwhile the Municipal Corporation not take any coercive steps against the respondent no.6.

5. It is the case of the respondent no.6 that in pursuance of the order dated 21st February, 2018 passed by this Court, the respondent no.6 made a fresh application under section 44 of the MRTP Act. The said application however, has not been considered according to the respondent no.6 neither by the Municipal Corporation nor by the SRA (DRP) on the ground of jurisdiction of the authority to entertain the application for regularization under section 44 of the MRTP Act. According to the respondent no.6, the said application is still pending.

6. Before this Court, the respondent no.6 also brought on record that the petitioner society and few members have carried out unauthorized construction in the premises of the petitioner society. It is the grievance of the respondent no.6 that though the Municipal Corporation has issued the notice under section 53(1) of the MRTP Act against the petitioner society, no steps have been taken against the petitioner society for demolition of unauthorized construction, if

any, carried out by the petitioner society.

7. It is the case of the Municipal Corporation that the notices have been issued by the Municipal Corporation not only against the petitioner society but also other members of the petitioner society, who had carried out unauthorized construction. A chart is produced on record to indicate the details of the notices issued by the Municipal Corporation.

8. Learned counsel for the Municipal Corporation in the affidavit in reply has pointed out certain allegations made by the petitioner society against the Assistant Law Officers of the Municipal Corporation, who appeared in the matter on the ground that no steps were taken by the Municipal Corporation to get the *ad-interim* order passed by this Court vacated in the petition filed by the petitioner in Writ Petition No.3190 of 2019. These allegations are vehemently opposed by the Municipal Corporation on the ground that the order of *status-quo* was passed by this Court in the said Writ Petition No.3190 of 2019 after hearing the parties. The matter thereafter did not appear on board for quite some time. There is substance in the submission made by the learned counsel for the Corporation.

9. Insofar as the submission made by the respondent no.6 in the Writ Petition No.3190 of 2019 that the application for regularization was already considered by the Municipal Corporation

and was allowed at the first instance on the application made by the predecessor-in-title of the respondent no.6 is concerned, Mr.Tamboly, learned counsel for the respondent no.6 tendered a compilation of documents in support of this submission. We permit the respondent no.6 to produce a copy of the said compilation for perusal of the Municipal Corporation.

10. It is also the case of the respondent no.6 that since the respondent no.6 was not aware of the application made by the predecessor-in-title of the respondent no.6 or any order passed thereon by the Municipal Corporation, the respondent no.6 made a fresh application for regularization. According to the respondent no.6, the said application is not yet rejected by the Municipal Corporation. In our view, all these aspects can be looked into by the Municipal Corporation.

11. A copy of the application made by the predecessor-in-title of the respondent no.6 and the order passed thereon, if any, forming part of the compilation tendered by the learned counsel for the respondent no.6 across the bar also shall be served upon the learned counsel for the petitioner society within 48 hours from today. The petitioner society as well as the respondent no.6 to appear before the designated officer of the Municipal Corporation on 2nd December, 2022 at 11:00 a.m. The petitioner society also would be at liberty to

file the documents which they propose to rely upon in support of their rival contentions. The respondent no.6 would be at liberty to rely upon the compilation of documents and any other documents which he proposes to rely upon in support of the application for regularization already alleged to have been made by the predecessor-in-title earlier and the same was alleged to have been granted and also in support of the case that the second application made by the respondent no.6 has not been rejected so far by the Municipal Corporation.

12. The designated officer of the Municipal Corporation shall grant personal hearing to the authorized representative of the petitioner society as well the respondent no.6 before passing any order. The designated officer shall pass a reasoned order and shall communicate the order to the parties within one week from the date of passing such order. The designated officer shall make an endeavour to pass appropriate order on this aspect within four weeks from the date of granting personal hearing. If the order that would be passed by the Municipal Corporation is adverse against the respondent no.6, no coercive steps shall be taken against the offending structure by the Municipal Corporation for a period of three weeks from the date of communication of such order. During the said period, the respondent no.6 shall not carry out any construction or alternation of any nature whatsoever without prior sanction of the

Municipal Corporation.

13. Insofar as the steps already taken by the Municipal Corporation against the petitioner society and the other flat owners, who have alleged to have carried out unauthorized construction according to the Municipal Corporation is concerned, if any final order is passed by the Municipal Corporation, and no stay is obtained by the petitioner society or the flat owners, the Municipal Corporation shall proceed with the action and to take it to its logical conclusion within four weeks from today.

14. At this stage, learned counsel for the Municipal Corporation states that there is no stay of any of the notice or orders passed by the Municipal Corporation holding the structures as unauthorized carried out by the petitioner society or the other members of the petitioner society. Statement is accepted.

15. Both the writ petitions are disposed of in aforesaid terms. *Ad-interim* relief granted by this Court in favour of the respondent no.6 in Writ Petition No.3190 of 2019 to continue till the order is passed by the Municipal Corporation on the aforesaid issues and for a period of three weeks from the date of communication of this order, if the same is adverse against the respondent no.6.

16. The writ petitions are disposed of in aforesaid terms. Rule is made absolute. It is made clear that this Court has not

expressed any views on the merits of the application for regularization made by the respondent no.6. All the contentions raised by all the parties on the said application are kept open.

17. None of the pending interim applications survives and are accordingly disposed of. No order as to costs.

(KAMAL KHATA, J.)

(R.D. DHANUKA, J.)