

rrpillai

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5807 OF 2023**

Shrikrushna Estate

... Petitioner

vs.

State of Maharashtra through its Principal
Secretary Urban Development and Another

... Respondents

Mr. Atul G. Damle, Senior Advocate i/b. Mr. V. S. Talkute, Advocate
for the Petitioner.

Ms. M. S. Bane, AGP for the State-Respondent No. 1.

**CORAM : R. D. DHANUKA &
GAURI GODSE, JJ.**

DATED : 2 MAY, 2023

P.C. :-

1. Rule. Learned counsel appearing for the Respondents waive service. Rule is made returnable forthwith. By consent of the parties, the Petition is taken up for final hearing.

2. This Writ Petition is filed for challenging notice dated 28th March 2018 issued by Respondent No. 2 under Section 52 and 53 of the Maharashtra Regional and Town Planning Act, 1966. The learned counsel for the Petitioner states that regularisation application was already filed by the Petitioner pursuant to the said notice.

3. Learned counsel for Respondent No. 2 on instructions states that regularisation application filed by the Petitioner was processed on 21 June 2018 and the Petitioner was directed to comply with certain requisitions. He further submitted that since the requisitions were not complied with, the application for regularisation was not decided and the same was informed to the Petitioner by letter dated 23rd August 2018. Learned counsel for Respondent No. 2 has placed on record copies of letter dated 21st June 2018 and 23rd August 2018.

4. Learned counsel appearing for the Petitioner on instructions states that the Petitioner would comply with the requisition as per notice dated 21st June, 2018 and file fresh application for regularisation as per the notice impugned in the present Writ Petition. Learned counsel for the Petitioner further states that application for regularisation shall be filed within a period of four weeks from today. Statement is accepted.

5. Since the regularisation application of the Petitioners is not decided on merits, Writ Petition can be disposed of by passing necessary directions, for deciding the application for regularisation. The Petitioner had filed Regular Civil Suit No. 219 of 2018 for

challenging the same notice which is impugned in the Petition. In the said suit there was an order dated 15th April 2019 wherein interim protection was granted and was continued from time to time. However, the same was set aside by order dated 12th April 2023 in Miscellaneous Civil Appeal No. 92 of 2019 which was preferred by Respondent No. 2. Learned counsel appearing for the Petitioner states that the said interim order was continued till 20th April 2023. By order dated 21st April 2023, this Court had granted interim protection to the Petitioner thereby directing Respondent No. 2 not to take coercive steps in respect of the offending structure with respect to the notice dated 28th March 2018 till 27th April 2023.

6. Learned counsel for the Petitioner states that he has filed pursis in the said court for withdrawal of the suit. As per pursis, the said suit will be withdrawn by the Petitioner. Statement made is accepted. Since the offending structure was protected by passing the aforesaid orders, the Writ Petition is disposed of by passing following directions :

(i) The Petitioners will be at liberty to file application for regularisation of the offending structure pursuant to the notice dated 28th March 2018 within a period of four weeks from today.

(ii) The Petitioner shall file application for regularisation in compliance with the letter dated 21st June 2018 and 23rd August 2018 issued by Respondent No. 2.

(iii) If the said application is filed, Respondent No. 2 shall decide the application in accordance with law within a period of four weeks thereafter. The decision shall be communicated to the Petitioner within one week from the date of decision by Respondent No. 2.

(iv) The Respondent No. 2 is directed not to take any coercive steps in respect of the offending structure pursuant to the notice dated 28th March 2018 till the application for regularisation is decided.

(v) In the event the decision on the regularisation application is adverse to the Petitioner, the interim relief granted for not taking coercive action in respect of the offending structure shall continue for three weeks from the date of communication of the order, and in that event the Petitioner will be at liberty to adopt appropriate proceedings as permissible in law.

(iv) We have not expressed any view on the merits of the impugned notice and the application for regularisation shall be decided on its own merits.

(vii) It is made clear that the Petitioner shall not carry out further construction with respect to the offending structure without obtaining necessary permission from Respondent No.2.

(viii) Writ Petition is disposed of.

(ix) Rule is made absolute in above terms.

(GAURI GODSE, J.)

(R. D. DHANUKA, J.)