

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2488 OF 2023

1. Aratharakkal Puthukudi (AP)

Azeez Mohammed Mohiddin Malabari
Son of K. Mohammed Mohiddin Malabari
Age 71 Years Occupation Business
Proprietor of the Famous Biryani (National Hotel),
Having address at Survey No.215/B,
Village Taloja Panchnand, Taluka Panvel

2. Rajesh Aziz Mundakandy Kuttiambeth

Son of AP Azeez Mohammed Mohiddin Malabari
(The Petitioner No.1 above)
Age-38 years Occupation – Business
having address at Survey No.215/B,
Village Taloja Panchnand, Taluka Panvel

... Petitioners

vs.

1. The Managing Director,

City and Industrial Development
Corporation Ltd. (CIDCO)
Having an office at CIDCO Bhavan, 2nd Floor,
CBD Belapur, Navi Mumbai

2. The Assistant Controller of Unauthorised Construction,

City and Industrial Development
Corporation Ltd. (CIDCO)
Having an office at CIDCO Bhavan, 2nd Floor,
CBD Belapur, Navi Mumbai

3. The Controller of Unauthorised Construction,

(South Division) City and Industrial Development
Corporation Ltd. (CIDCO)
Having an office at CIDCO Bhavan, 2nd Floor,
CBD Belapur, Navi Mumbai

4. The Chief Controller of Unauthorised Construction,

City and Industrial Development
Corporation Ltd. (CIDCO)
Having an office at CIDCO Bhavan, 2nd Floor,
CBD Belapur, Navi Mumbai

5. The Town Planning Department
Through the Chief Planner of the
City and Industrial Development
Corporation Ltd. (CIDCO)
Having an office at CIDCO Bhavan, 2nd Floor,
CBD Belapur, Navi Mumbai
 6. The Principal Secretary,
Revenue and Forest Department,
Having office at Mantralaya, Mumbai
 7. The Principal Secretary,
Urban Land Development
Having office at Mantralaya, Mumbai
 8. The Commissioner of Police,
Navi Mumbai, having office at
Police Commissionarate, Navi Mumbai
 9. The State of Maharashtra
Through The Chief Secretary,
Having office at Mantralaya, Mumbai
- ... Respondents

Mr Rahul Thakkar, Advocate with Ms Sushmita Tandel, Advocate for the petitioners.

Mr G. S. Hegde, Senior Advocate with Ms P. M. Bhansali, Advocate for respondent Nos.1 to 5/CIDCO.

Ms R. M. Shinde, Assistant Government Pleader for respondent Nos.6 to 9/State.

CORAM : A. S. CHANDURKAR AND ABHAY S. WAGHWASE, JJ.

DATE : February 27, 2023

Oral Judgment : (Per : A. S. Chandurkar, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties. Considering the short issue involved, the writ petition is taken up for final disposal.

2. It is the case of the petitioners that the construction in question undertaken by them is in existence since 1942. The petitioners claim that an

undated notice was sought to be served under Section 54(1) of the Maharashtra Regional and Town Planning Act, 1966 (for short, the Act of 1966) which was not actually received by the petitioners. Thereafter on 23/01/2023 the respondents-CIDCO issued another notice calling upon the petitioners to remove the construction in question on the ground that it was not in accordance with the permission granted. The petitioners on 09/02/2023 moved an application for regularisation of the aforesaid construction and apprehending action to be taken pursuant to the earlier notice, have filed the present writ petition.

3. On hearing the learned counsel for the parties, we find that pursuant to the notice dated 23/01/2023 issued to the petitioners indicating action to be taken under provisions of the Act of 1966, an application for regularisation of the construction is pending with the respondents. The same having been made on 09/02/2023, the interests of justice would be served by issuing following directions :

- (i) The respondents shall consider the petitioners' application for regularisation dated 09/02/2023 in accordance with law and after giving an opportunity of hearing to the petitioners.
- (ii) Till such decision is taken, the notice issued by the respondent initially on 15/05/2018 as well as subsequent notice dated 23/01/2023 shall not be acted upon.
- (iii) It is made clear that this Court has not examined the merits of the

rival contentions of the parties and the respondents are free to consider the petitioners' application in accordance with law and take a decision thereon. The decision taken be communicated to the petitioners.

(iv) The Writ Petition is allowed. Rule accordingly. No order as to costs.

(ABHAY S. WAGHWASE, J.)

(A. S. CHANDURKAR, J.)

AARTI G
PALKAR

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Date: 2023.02.28
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Asmita