



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 5685 OF 2021

(Ramgopal s/o Bansilal Vyas Vs. Amravati Municipal Corporation, through Municipal Commissioner,
Amravati)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri P.R. Agrawal, Advocate for the petitioner.

Shri J.B. Kasat, Advocate for the respondent.

CORAM : A. S. CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

DATE : AUGUST 19, 2023

Heard.

2] The petitioner is aggrieved by the contents of the Notesheet dated 22/2/2019 that has been maintained by the respondent – Amravati Municipal Corporation. By the said Notesheet, the petitioner has been called upon to deposit 15% amount of premium towards the relaxation sought in the matter of permission to construct in the marginal space.

3] The petitioner by moving an application under Section 44 of the Maharashtra Regional and Town Planning Act, 1966 on 26/10/2017 sought development permission to be undertaken on Survey No. 17/2 - Plot No.5 owned by the petitioner. The petitioner was directed to obtain a No Objection Certificate from the Public Works Department vide communication dated 7/11/2017. This No Objection Certificate was issued by the Public Works Department on 26/12/2017. On 17/5/2018, the petitioner moved an application seeking relaxation for the proposed and existing construction to be undertaken with regard to the common wall and other construction. On 6/12/2018, such relaxation was granted subject to paying premium of an amount of Rs.9,73,270/-. In the meanwhile, on 22/2/2019, the amount of premium that was required to be deposited was enhanced from 10% to 15% and the same was directed to take effect immediately. The petitioner subsequently on 9/1/2020 was issued a receipt of depositing an amount of Rs.9,73,270/-. The Corporation sought to demand further amount of Rs.4,86,635/- being 5% of the said amount so as to make a total of 15% premium amount. Being aggrieved by this demand

of 5%, the petitioner has approached this Court by filing the present Writ Petition.

4] Shri P.R. Agrawal, learned Counsel for the petitioner submits that since the relaxation was granted on 6/12/2018 and the amount of premium was deposited on 9/1/2020, there was no justification in the demand of additional 5% premium by the Corporation. According to him, the order dated 22/2/2019 could not be given retrospective effect and that the relaxation granted earlier ought to be considered on payment of premium of 10%. Relying upon the averments in paragraph 7 of the Writ Petition, it is submitted that since no demand of amount of premium was ever made despite approval being granted on 6/12/2018, the petitioner could not be faulted by requiring him to pay 5% additional premium on the basis of the order passed after 6/12/2018. He further submits that since the petitioner has paid 10% amount of premium, the necessary sanction to the building plan ought to be granted.

5] Shri J.B. Kasat, learned Counsel for the respondent opposed the aforesaid submissions. According to him, since the petitioner did not pay the amount of premium pursuant to the approval granted on 6/12/2018 and the rate of premium was revised to 15% on 22/2/2019, the petitioner was liable to pay the amount of premium in accordance with the revised rate. Initially, payment of 10% of premium amount was made on 9/1/2020 and therefore there was no illegality committed in demanding the balance amount of 5% premium. According to him, since the petitioner is seeking relaxation in terms of Clause 16.2 of the Notification dated 20/9/2016, the same was admissible only on the payment of prevailing premium. The same would take effect on the date such premium was paid.

6] We have heard the learned Counsel for the parties and we have perused the documents on record. It is not in dispute that approval to the relaxation was sought by the petitioner on 17/5/2018. Same came to be granted on 6/12/2018 and premium of 10% was to be paid which was an amount of Rs.9,73,270/-. The petitioner however failed to pay that amount and in the meanwhile the rate of premium came to be revised from 22/2/2019 to 15%. The initial payment of 10% premium has been made on 9/1/2020. The benefit of such relaxation as

indicated in the order dated 6/12/2018 would be admissible from the date the amount of premium as applicable towards such relaxation is paid. It is true that on 6/12/2018, 10% premium was liable to be paid. Had the said amount of 10% been paid prior to its revision to 15%, there was no question of demanding 5% extra premium from the petitioner. However, the initial payment of 10% has been made on 9/1/2020 by which time the premium stood enhanced to 15% on 22/2/2019. We therefore find that it is not a case of retrospectively applying the order dated 22/2/2019 enhancing the amount of premium. The relaxation would take effect after the amount of premium is paid.

7] Insofar as the stand of the petitioner that there was no response given to the efforts of the petitioner of making payment of amount of premium, we find this to be a disputed aspect. The same would be of not much relevance since though the approval is dated 6/12/2018, the matter would be governed by the rate of premium prevailing on the date of payment so as to grant the benefit of relaxation.

8] For the aforesaid reasons, we do not find that there is any illegality committed in demanding the aforesaid amount of premium. The Writ Petition is therefore dismissed with no order as to costs. It is clarified that on the petitioner paying the balance amount of premium, the necessary building permission shall be granted to the petitioner in accordance with the order dated 6/12/2018 subject to all necessary compliances being made.

(MRS. VRUSHALI V. JOSHI, J.)

(A. S. CHANDURKAR, J.)

SUMIT