

Wadhwa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9440 OF 2024

Ravi Babulal Vasita ...Petitioner
Versus
The State of Maharashtra & Anr ...Respondents

Mr Amit A Karva, *for the Petitioner.*
Mrs Rupali Shinde, AGP, *for the Respondent-State.*
Mr Suresh M Kamble, *for Respondent No. 2.*

CORAM M.S. Sonak &
Kamal Khata, JJ.
DATED: 5th July 2024

PC:-

1. Heard learned counsel for the parties.

2. The Petitioner challenges the communication dated 3rd July 2024, by which the Petitioners are called upon to demolish the construction they put up. The learned counsel for the Petitioner refers to the judgment and order dated 20th June 2018 in Writ Petition No. 5675 of 2017 instituted by the alleged earlier owner of the property.

3. Learned counsel for the Petitioner states that the Petitioner has now stepped into the shoes of Mr Baldev Tejwani, the erstwhile

owner and the Petitioner in Writ Petition No. 5675 of 2017. As a corollary, the learned counsel for the Petitioner agrees that the undertaking that was given by Mr Tejawani in Writ Petition No. 5675 of 2017 will equally bind the present Petitioner.

4. The operative portion of this Court's order dated 20th June 2018 in Writ Petition No. 5675 of 2017 reads as follows:

“4. In view of the undertaking, a limited protection will have to be granted to the petitioner. Accordingly, we dispose of the petition by passing the following order:

(i) The joint undertaking on oath of the petitioner and others is taken on record and marked “U-1” for identification. The undertakings given therein are accepted;

(ii) It will be open for the petitioner to apply for regularization of the structure subject matter of this petition within a period of one month from today. The application shall be made through a licensed Architect in the prescribed form and by the prescribed mode;

(iii) If such an application is made, the second respondent shall dispose of the same within a period of sixty days from the date of filing of the application. The order passed on the

regularization application shall be communicated to the petitioner's Architect. Till the communication of the order, an action of demolition shall not be taken;

(iv) If the order be adverse to the petitioner, the action of demolition shall not be taken in respect of the subject structure for a period of thirty days from the date of communication of the order to the petitioner's Architect so as to enable the petitioner to prefer an appeal before the Appellate Authority;

(v) If the appeal is preferred within a stipulated period of thirty days and the same is dismissed, an action of demolition shall not be taken for a period of one month from the date of communication of the order of the Appellate Authority to the petitioner, to enable the petitioner to comply with the undertaking;

(vi) If the petitioner fails to comply with the undertaking within the stipulated period of one month from the date of communication of the order of the Appellate Authority, it will be open for the second respondent to demolish the subject structure without any further notice to the petitioner or any other person;

(vii) We make it clear that we have not made any adjudication on the regularization application proposed to be made by the petitioner;

(viii) Writ petition is disposed of on the above terms.”

5. The learned counsel for the Corporation furnishes a copy of the order dated 2nd July 2024, by which the Petitioner’s application for regularisation has been rejected. There is no record of this order being served upon either the erstwhile owner or the present Petitioner. Therefore, the present Petitioner is deemed to have been served with this order only today.

6. The learned counsel for the Petitioner states that an appeal against this order will be filed before the appellate authority within a week from today. The Appellate Authority is directed to dispose of this appeal within four weeks from the date of its institution. The Petitioner and Corporation should not delay the disposal of the appeal. In particular, the Petitioner should not seek any undue adjournments.

7. If the appeal is dismissed, the Corporation should not act pursuant to the communication dated 3rd July 2024 for a month from the date of communication of the Appellate Authority’s adverse order.

8. If the appeal is not filed within a week from today after an advance copy is given to the Corporation, the Corporation shall be entitled to proceed with its notice dated 3rd July 2024. However, if the appeal is filed within one week, then during the pendency of such appeal, and for one month from the date of communication of the adverse order, the Corporation should not act on its communication dated 3rd July 2024.

9. With the above directions, this Petition is disposed of. No costs.

10. All concerned to act on an authenticated copy of this order.

(Kamal Khata, J)

(M.S. Sonak, J)