

Sumedh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 4181 OF 2024
WITH
WRIT PETITION NO. 4215 OF 2024

Dilip L Popley & Ors ...Petitioners

Versus

Municipal Corporation of Greater Mumbai & ...Respondents
Ors

WITH
WRIT PETITION NO. 4182 OF 2024

Dilip L Popley & Ors ...Petitioners

Versus

Municipal Corporation of Greater Mumbai & ...Respondents
Ors

Mr Aseem Naphade, *with Swati Sawant, L Shaikh i/b SK Legal Associates LLP, for the Petitioner.*

Mr SV Tondwalkar, *for the Respondent-BMC.*

CORAM: M.S. Sonak &
Kamal Khata, JJ

DATED: 30th September 2024

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PC:-

1. Heard learned counsel for the Petitioner in all these Petitions.
2. The challenge in this Petition is to the impugned notice dated 28 February 2004 and the consequential order under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966, requiring the Petitioners to demolish the illegal constructions carried out by the Petitioners.
3. The record shows that an identical notice regarding the very same illegal construction was issued to the Petitioners on 28/02/2023. At that time, the Petitioners rushed to the Civil Court and instituted a Civil Suit. In the Civil Suit, they sought interim relief by submitting that they were prepared to go for regularisation.
4. On 29/03/2023, the learned Civil Judge made the following order:

“29/03/2023 CORAM H.H. JUDGE SHRI N. L. KALE (CR.NO.14) SU 865/2023
(By praecipe) Adv. Kalawadia for Plaintiff present.
Adv. Smt. Patankar for Deft./MCGM present.
Aniket A. Bhokare Sr. Eng. – Officer MCGM present. Exh.1 Plaint Exh.2 V/N of Advocate for plaintiff. Exh.3 Memorandum of Registered address of plaintiff. Exh.4 List of documents.

Advocate for the plaintiff tendered Draft N/M alongwith supporting affidavit. t.o.r. Leave granted to register the same. Heard Ld. advocate of both sides. Perused record. It reveals that, plaintiff is ready to for regularisation regarding alleged unauthorised construction. Plaintiff seek time to file/submit online proposal of regularisation to BMC. Considering the submissions 6 weeks time from today granted to plaintiff to submit online regularisation proposal in respect of alleged unauthorised structure. If plaintiff fails to submit said proposal to BMC within a period of 6 weeks, then BMC/Deft. is at liberty to take further actions. If plaintiff filed said proposal within 6 weeks then, defendant not to take any action in respect of suit premises till the decision on same proposal. In view of the above directions, Draft N/M stands disposed off, plaintiff to register the same for statistical purpose. Adjd. For steps to 12-06-2023."

5. Learned counsel for the parties state that similar orders were made in all three matters. According to the said order, the Petitioners were to apply for regularisation within six weeks. The order clarifies that if no such online regularisation proposal is submitted within six weeks, the BMC is at liberty to proceed with its demolition notice.

6. Mr Naphade, learned counsel for the Petitioner, points out that attempts were made to file regularisation applications, but the BMC allegedly insisted that the same should be filed through the

original architect of the building. In this regard, the affidavit of the current architect is sought to be produced on record.

7. Suppose the BMC declined to accept the online regularisation proposal on the grounds alleged. In that case, it is reasonable to assume that the Petitioner would have rushed to the Civil Court and pointed out this fact. Instead, the Petitioners have done nothing until they were served with yet another notice dated 28 February 2024, which is more like a reminder. There was no necessity for such notice. In any event, the petitioners cannot draw any undue mileage from such a notice.

8. Even after the second notice dated 28 February 2024 was served, the Petitioners did not amend the plaint in the Civil Court. Instead, this Petition was instituted on 26 June 2024, almost four months after the receipt of the impugned notice dated 28 February 2024. This was obviously to avoid explaining the abuse of the liberty secured from the civil court in the first round of litigation to protect the patently unauthorised structures erected by the petitioners.

9. The Petition proceeds on the basis that it is the Petitioner's right to carry out illegal constructions. If and when the BMC initiates any action, they have further right to seek regularisation. At least that is the firm impression the the petitioners seem to carry. Here, the regularisation applications have not even been made in the period prescribed under Section 53(3) of the MRTPA Act. The reasons for not making such an application despite

obtaining an order dated 01/04/2023 from the Civil Court do not inspire any confidence whatsoever.

10. The Petitioners' whole intention is to keep the issue of regularisation pending so that, in the meantime, the Corporation is prevented from taking action against the illegal constructions. The Petitioners did not even bother to file this Petition or move the Civil Court no sooner then received the notice dated 28/02/2024. There is no explanation why, on this occasion, the Petitioners approached the High Court when, concerning an identical notice issued on 28/02/2023, the Petitioners rushed to the Civil Court and obtained interim relief by making a statement that they would apply online regularisation within six weeks.

11. The patently unauthorised constructions erected by the petitioners cannot be sought to be protected by the petitioners by adopting such a stratagem. The difficulties now projected by belatedly filing the architect's affidavit are not honest. There is no explanation why these difficulties, if genuine, were not immediately pointed out to the civil court seized of the matter. The petitioners' entire approach is to buy time from different fora and protect the patently unauthorised constructions. This Court's extraordinary and equitable jurisdiction cannot be extended to assist the petitioners in such a misadventure.

12. We are not inclined to entertain these Petitions for all the above reasons. Accordingly, they are dismissed without any orders for costs.

(Kamal Khata, J)

(M.S. Sonak, J)