



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

WRIT PETITION NO. 8084 OF 2019

ram s/o Satramdas Jiwatramani and another ..vs.. Akola Municipal Corporation and another)

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

Court's or Judge's orders

Mr. S.S. Sarda, Counsel for the petitioners,
Mr. Parimal R. Jalit, Counsel h/f. Mr. Anand Thotange, Counsel for
respondent No.2.

CORAM : ABHAY J. MANTRI, J.

DATED : 04-04-2024

Heard the learned Counsel for the petitioners.

2. The learned Counsel for respondent No.2 seeks three weeks time to file an affidavit-in-reply. However, on perusal of the petition, it seems that since 2019 the petition has been pending. Though respondent No.2 has put his appearance in the matter in 2021, he has failed to file an affidavit-in-reply. Today also the learned Counsel has submitted that he has not received any instruction on behalf of respondent No.2. Therefore, I am not inclined to grant further time to file a reply. Hence the prayer for seeking time is rejected.

3. Perused the impugned order and record.

4. The challenge raised to the order dated 07-12-2019 passed by respondent No.2 thereby rejecting the application of the petitioners under Section 53(3) of the Maharashtra Regional and Town Planning Act (for short "*MRTP Act*") for the grant of permission under Section 44 of the *MRTP Act* for retention of the building on the land.

5. The learned Counsel for the petitioners vehemently contended that after the issuance of the notice, the petitioners had filed an application under Section 53(3) of the MRTP Act with the respondents on 31-10-2019. However, respondent No.2 without giving any opportunity of hearing to the petitioners rejected the said application and, therefore, they have preferred this petition challenging the said order.

6. During the argument, the learned Counsel for the petitioners invited my attention to the sale deed as well as the application along with the documents submitted before the respondent authorities and submitted that respondent No.2 without following the principles of natural justice and without giving the opportunity of hearing to satisfy the queries, has passed the impugned order. Therefore, the learned Counsel for the petitioners has urged that the order be set aside and respondent No.2 be directed to reconsider the application preferred by the petitioners afresh.

7. It seems that by order dated 10-12-2019, this Court has continued the *status quo* order granted by the learned 5th Civil Judge (J.D.), Akola on 05-11-2019. So also, despite granting opportunity, respondent No.2 has failed to file an affidavit-in-reply in the matter and, therefore, the case propounded by the petitioners remained uncontroverted. As such, there is no reason to disbelieve the same.

8. Having considered the submissions of the parties and the fact that the matter has been pending since 2019, it would be proper to direct respondent No.2 to reconsider the application of the petitioners afresh by giving them an opportunity for a hearing. It would not cause prejudice to them.

9. Hence, I deem it appropriate to pass the following order.

- (a) The petition is allowed.
- (b) The impugned order dated 07-12-2019 passed by respondent No.2 is hereby quashed and set aside.
- (c) Respondent No.2 is directed to reconsider the application of the petitioners afresh by giving an opportunity of hearing to them and pass a reasoned order.

(ABHAY J. MANTRI, J.)

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