

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 233 OF 2024

Sunil Gokarna Dubey

....*Petitioner*

: *Versus* :

The State of Maharashtra,
Through the Chief Minister & Ors.

....*Respondents*

Mr. Bhushan Walimbe with Mr. Mayank Tripathi and Ms. Preeti Walimbe, for the Petitioner.

Mr. Balkrishna D. Joshi, for Respondent No.3.

Mr. Sanjiv Sawant with Ms. Bhakti Wast i/b Mr. Abhishek Deshmukh, for Respondent No.4.

Mr. O.A.Chandurkar, AGP for Respondent-State.

CORAM : SANDEEP V. MARNE, J.

Date : 6 January 2025.

P.C. :

1) **Rule.** Rule made returnable forthwith. With the consent of the learned counsel appearing for the parties, the petition is taken up for hearing and final disposal.

2) The petition challenges the order dated 2 November 2023 passed by the Additional Chief Secretary, Urban

Development Department rejecting Appeals preferred by the Petitioner on 22 February 2021 and 25 January 2022 under the provisions of Section 47 of the Maharashtra Regional Town Planning Act, 1966 (**MRTP Act**).

3) I have heard the learned counsel appearing for the parties and have considered the submissions canvassed by them.

4) It appears that the Petitioner had initially filed a proposal for development permission under Section 44 of the MRTP Act in respect of construction carried out at Survey No.114/5, City Survey Nos. 1817, 1875 to 1885, Village-Palghar, Taluka & District-Palghar. The Palghar Nagar Parishad however rejected the said proposal for grant of development permission by order dated 3 December 2020 pointing out various deficiencies as enumerated in the said order. Aggrieved by the rejection of the proposal for development permission by letter dated 3 December 2020, Petitioner preferred Appeal under the provisions of Section 47 of the MRTP Act before the State Government on 22 February 2021. It appears that on account of rejection of proposal for development permission on 3 December 2020, Palghar Nagar Parishad proceeded to issue Notice under the provisions of Sections 52 and 53 of the MRTP Act to the Petitioner on 2 February 2021. Without prejudice to his pending Appeal dated 22 February 2021 preferred before the State Government, the Petitioner was apparently advised to file proposal for regularisation of the construction under the provisions of sub-section (3) of Section 53 of the MRTP Act after receipt of notice dated 2 February 2021.

Accordingly, such proposal for regularisation under Sections 53(3) of the MRTP Act was preferred by the Petitioner on 21 December 2021. The said regularisation proposal was rejected by the Palghar Nagar Parishad by order dated 22 December 2021. The said decision of Palghar Municipal Council dated 22 December 2021 came to be questioned by the Petitioner by filing another Appeal before the State Government on 25 January 2022. It appears that both the Appeals dated 22 February 2021 and 25 January 2022 are decided and rejected by the State Government by common order dated 2 November 2023.

5) Mr. Walimbe, the learned counsel appearing for the Petitioner would raise a grievance that the Appeal was actually heard by the learned Minister, Urban Development Department but the impugned order is passed by the Additional Chief Secretary of the Urban Development Department.

6) However, what is more glaring in the order dated 2 November 2023 is the fact that the State Government has not decided the merits of the contentions raised by the Petitioner in its two Appeals. The Appellate Authority has recorded a completely baseless finding in the order dated 2 November 2023 that the Appeal was not preferred against rejection of proposal for development permission under Section 44 of the Act but the same is filed seeking cancellation of Notice under Section 53 of the MRTP Act.

7) When a person, to whom notice is addressed under Section 53(1) of the MRTP Act, under the provisions of sub-section (3) of Section 53, he can file an application for permission under Section 44 of the Act for retention of such structure and the application so made is required to be decided in accordance with Chapter-IV of the MRTP Act. Thus, every application made for regularisation of the structure under Section 53(3) of the MRTP Act is required to be dealt with and decided as if it is an application for development permission under the provisions of Section 44 of the Act. The State Government has completely misdirected itself by treating Appeals preferred by the Petitioner as if the same are filed for the purposes of cancellation of Notice issued on 2 February 2021 under Section 53(1) of the MRTP Act. In the result, State Government has not at all decided the Appeals of the Petitioner on merits and has proceeded to reject the same on erroneous consideration. In my view, therefore the Appeals preferred by the Petitioner are required to be heard and decided afresh on merits. This direction would also obviate the objection raised by the Petitioner about hearing of the Appeals by the learned Minister and passing of the order by the Additional Chief Secretary.

8) I accordingly proceed to pass the following Order:

(i) The order dated 2 November 2023 passed by the State Government on Appeals preferred by the Petitioner is set aside.

(ii) Appeals dated 22 February 2021 and 25 January 2022 preferred by the Petitioner shall stand restored on the file of the State Government.

(iii) The State Government shall grant fresh opportunity of hearing to the Petitioner on his Appeals and decide the same in an expeditious manner, preferably within a period of 4 months.

(iv) Parties shall appear before the Appellate Authority on 15 January 2025 at 11 am and shall obtain further directions with regard to the date of hearing of the Appeals.

(v) All contentions of the rival parties are expressly kept open.

(vi) Till the Appeals of the Petitioner are decided, ad-interim relief granted by this Court by order dated 8 January 2023 shall continue to operate.

9) With the above directions, the Writ Petition is **partly allowed and disposed of**. Rule is made partly absolute.

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[SANDEEP V. MARNE, J.]