

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.16974 OF 2024

Nanik Ramchandrar Punjabi
V/S

....Petitioner

State of Maharashtra & Ors.

....Respondents

Mr. T.D. Deshmukh with Mr. Sagar Kursija *for the Petitioner.*

Ms. S.A. Prabhune, AGP *for Respondent No.1 / State.*

Mr. Shrikrishna Ganbavale for Respondent Nos.2 to 4-
Corporation.

Mr. D.M. Gupte *for Respondent No.5.*

Mr. Aniket Punjabi *for Respondent No.6.*

CORAM: SANDEEP V. MARNE, J.

DATE : 17 MARCH 2025.

P.C.:

1. The Petition challenges order dated 24 October 2024 passed by the State Government rejecting the Appeal preferred by the Petitioner under provisions of Section 47 of the Maharashtra Regional Town Planning Act, 1966 (**MRTP Act**) against order dated 19 June 2024 passed by Pimpri Chinchwad Municipal Corporation. By order dated 19 June 2024, the Municipal Corporation had simply filed the proposal submitted by the Petitioner under the provisions of the Maharashtra Gunthewari Developments (Regularization, Upgradation and Control) Act, 2001 (**the Gunthewari Act**) on the ground that the Petitioner had failed to submit consent of the co-owners.

2. I have heard Mr. Deshmukh, the learned counsel appearing for the Petitioner, Ms. Prabhune, the learned AGP appearing for the Respondent No.1/State, Mr. Ganbavale, the learned counsel appearing for Respondent Nos.2 to 4-Municipal Corporation, Mr. Gupte the learned counsel appearing for Respondent No.5 and Mr. Punjabi, the learned counsel appearing for Respondent No.6.

3. It appears that the Petitioner has erected unauthorized construction which has attracted notice under provisions of Section 53(1) of the MRTP Act on 10 June 2019. Admittedly the Petitioner has not filed application for regularization of the structure under provisions of sub-section 3 of the Section 53 of the MRTP Act. Instead he submitted a proposal under provisions of the Gunthewari Act to the Municipal Corporation. The proposal submitted under the Gunthewari Act came to be filed by the Municipal Corporation and a communication to that effect was issued to the Petitioner vide letter dated 19 June 2024. The proposal was not further processed by the Municipal Corporation on the ground of failure on the part of the Petitioner to submit consent letters of the co-owners. It appears that the Respondent Nos.5 and 6 are the other co-owners of the land in question and there is a serious title dispute between Petitioner and Respondent Nos.5 and 6 in respect of the land on which the unauthorized construction has taken place. There is no dispute to the position that there is no appeal maintainable in respect of

an order passed under provisions of the Gunthewari Act. Mr. Deshmukh would however submit that Petitioner treated communication dated 19 June 2024 as a rejection of development permission under Section 44 of the MRTP Act and accordingly filed appeal under Section 47 of the MRTP Act to the State Government which has been rejected by the order dated 24 October 2024. Petitioner has thus moved from one enactment to another as per his convenience. As observed above, initially notice under provisions of Section 53(1) of the MRTP Act was issued in respect of Petitioner's unauthorized construction. Instead of availing the remedy provided under Section 53(3) of the Act, the Petitioner shifted to another enactment viz. the Gunthewari Act by filing a proposal for regularization of the alleged fragmentation. Once the proposal for Gunthewari Act was not processed vide communication dated 19 June 2024 in absence of consent letter by co-owners, Petitioner again thought of coming back to the regime of MRTP Act and filed Appeal under section 47 thereof to the State Government.

4. It appears that there are atleast two orders passed by the Division Bench of this Court which has directed the Respondent-Municipal Corporation to take action against the unauthorized structure erected by the Petitioner. Respondent Nos.5 and 6 have relied upon order dated 10 July 2023 passed in Writ Petition No.4040 of 2023 and order dated 21 June 2024 passed in Writ Petition No.5608 of 2024 and Writ Petition (Stamp) No.17148 of

2024. True it is that the Petitioner was granted liberty to challenge the order refusing to regularise his structure. However there is nothing on record to indicate that the Petitioner ever applied for regularization of the structure by filing proposal under Section 53(3) of the MRTP Act. Mr. Gupte and Mr. Punjabi would seriously dispute maintainability of proceedings under the Gunthewari Act by contending that there is no unlawful fragmentation which needs to be regularized under provisions of Gunthewari Act. They would contend that provisions of Gunthewari Act cannot be invoked for the purpose of regularizing the unauthorized structure erected by the Petitioner.

5. Considering the facts and circumstances of the present case, where there is a serious title dispute between Petitioner and Respondent Nos.5 and 6, I do not see any valid reason to interfere in the communication dated 19 June 2024 by which the Municipal Corporation has refused to entertain Petitioner's application for regularisation of Gunthewari in absence of consent letters from the other co-owners. The real grouse of the Petitioner is not non-regularisation of fragmentation. He is really aggrieved by issuance of notice by the Municipal Corporation under Section 53(1) of the MRTP Act on 10 June 2019. So long as the structure is not regularized under provisions of Section 53(3) of the MRTP Act, the same is bound to be demolished. Once law is set into motion by issuance of notice under Section

53(1) of the MRTP Act, the action can be terminated only in the event of grant of development permission by taking a route under Section 53(3) and then under Section 44 of the MRTP Act. As of today, there is no development permission granted to the structure of the Petitioner under Section 44 of the MRTP Act. Petitioner has clearly tried to create a confusion by deliberately taking recourse to the provisions of Gunthewari Act as if non-regularization of fragmentation is the real cause for issuance of notice under Section 53(1) of the MRTP Act by the Municipal Corporation. What is objectionable is the conduct on the part of the Petitioner in indulging in unauthorized construction without obtaining development permission. Such structure cannot be undertaken for regularisation under the provisions of Gunthewari Act. Petitioner has not sought regularisation of the structure by submitting a proposal under section 53(3) of the MRTP Act, therefore the Municipal Corporation is liable to demolish the said structure as has been repeatedly directed by the Division Bench of this Court.

6. Mr. Deshmukh would rely upon judgment of Division Bench of this Court in ***Sarojini Motisao Surodaya and others vs. State of Maharashtra and others***, 2006 (5) MhLJ 573 in support of his contention that even a person merely occupying a plot is entitled to apply for regularisation under the Gunthewari Act. In my view, the judgment in ***Sarojini Motisao Surodaya and others*** (supra) cannot be read in support of an absolute

proposition of law that in every case one of the co-owners can apply for regularisation of Gunthewari development when other co-owners have a serious objection to such regularization.

7. In any case, the real problem in the present case is not the unauthorized fragmentation. The real problem is the manner in which the Petitioner has indulged in rank unauthorized construction which is sought to be demolished by the Municipal Corporation. In my view, the action initiated by the Municipal Corporation must be permitted to be taken to its logical end. Considering the facts and circumstances of the case, I am not inclined to exercise jurisdiction under Article 227 of the Constitution of India.

8. I therefore do not find any valid reason to entertain the present Petition. The Petition is accordingly **rejected**.

9. After the order is pronounced, Mr. Deshmukh, the learned counsel for the Petitioner would pray for continuation of interim order passed by this Court. Request is opposed by the learned counsel for the Respondent. Considering the nature of findings recorded while rejecting the Petition, I am not inclined to extend the interim protection any further. The request for continuation of stay is accordingly rejected.

SUDARSHAN
RAJALINGAM
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by SUDARSHAN
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2025.03.19
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(SANDEEP V. MARNE, J.)