

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 17517 OF 2024

Chrysostom Marcel Coutinho and Anr.

... Petitioners

Versus

State of Maharashtra Thr. The Ministry
of Revenue and Forest Dept and Ors

... Respondents

Mr. Anil D'Souza *a/w Mark Dbritto i/b Ernest Tuscano for the Petitioners.*

Ms. A.A. Nadkarni, *AGP for Respondent Nos. 1 to 3 / State.*

Ms. Kamana Kapoor *a/w Dhaneshwari Chaudhary for Respondent No.4 – W & W CHSL.*

CORAM : SANDEEP V. MARNE, J.

DATE : 5 FEBRUARY 2025.

P.C. :

1) The Petition challenges Order dated 14 June 2024 passed by the Hon'ble Minister (Revenue) allowing the Revision Application preferred by Respondent No.4-Society and setting aside the order dated 3 October 2022 passed by the Additional Commissioner, Kokan Division. By order dated 3 October 2022, the Additional Commissioner had set aside Collector's order dated 8 January 2020 by which the Collector had directed demolition of structure of the Petitioner.

2) I have heard Mr. D'souza, the learned counsel appearing for Petitioners, Ms. Nadkarni, the learned AGP appearing

for Respondent Nos. 1 to 3 and Ms. Kapoor, the learned counsel appearing for Respondent No.4.

3) After having considered the submissions canvassed by the learned counsel appearing for parties, it appears that Respondent No.4 applied before the Collector for demolition of construction of resort of the Petitioners essentially on the ground that the same is constructed on land reserved in the plan as Green Zone-2. It appears that the Petitioners invited attention of the Collector to the Notification dated 12 January 2016 issued under provisions of Section 20(4) of the Maharashtra Regional and Town Planning Act, 1966 amending Regulation No. 15.11.4 applicable to Mumbai Metropolitan Region and according to them, development in nature of expansion of existing gaathan is permitted within 200 mtrs. from the existing boundaries of the gaathan. It is further contended by the Petitioners that since more than 50% of the area of the survey numbers is covered within the peripheral distance, the remaining area of the survey number is required to be considered for development on payment of premium. It appears that the Collector had taken cognizance of the said Notification dated 12 January 2016 and had directed Petitioners on 4 December 2019 to file an application for regularization/issuance of development permission. Petitioners' application was referred to the office of Assistant Director of Town Planning, Palghar (**ADTP**), who issued negative recommendation dated 21 December 2019 for regularization/grant of development permission. This is why the Collector proceeded to pass impugned demolition order dated 8 January 2020. The order of the Collector was reversed by the Additional Commissioner directing conduct of fresh enquiry in terms of notification dated 12 January 2016. The Hon'ble Minister (Revenue) has however set aside the

order of the Additional Commissioner and has confirmed the Collector's order.

4) It appears that during pendency of proceedings before the Additional Commissioner and the Hon'ble Minister, Petitioners' application for regularization/grant of development permission was once again processed by the ADTP, who has given report dated 11 August 2021. It appears that the fresh proposal for regularization was for operating the construction for use as 'old-age home and dormitories' and not as a resort. The ADTP considered the proposal and has given report dated 11 August 2021 recommending regularization of construction put up by the Petitioners for being used as old age home and dormitories upon payment of the suggested penalty of Rs.87,400/-.

5) In my view, the Collector's mind was heavily influenced by ADTP's negative report dated 21 December 2019. Now that positive report has been submitted by ADTP on 11 August 2021, the Collector needs to apply his mind afresh. In order to enable the Collector to do so, it would be necessary to set aside the orders passed by the Hon'ble Minister and the Collector by remanding the proceedings before the Collector for fresh decision. Ms. Kapoor would submit that the ADTP's report dated 11 August 2021 is not in consonance of the amended Regulations and that the syndrome of '*first construct illegally and then apply for regularization*' cannot be encouraged. However, the Collector himself had directed Petitioners to apply for regularization on 4 December 2019 and the impugned order of demolition was passed only because of receipt of negative report from the ADTP. Now that the positive recommendations are received from ADTP, the least that is required to be done is to direct

the Collector to apply his mind to that report. Respondent No. 4 would be entitled to demonstrate before the Collector that the structure is incapable of being regularized. Since the change of use is now suggested and the ADTP's recommendations are *qua* proposed changed use of the land and structure, Petitioners cannot be permitted to put the structure to any use till the Collector takes a fresh decision in the matter.

6) I accordingly proceed to pass the following order:

a) Order dated 14 June 2024 passed by the Hon'ble Minister is set aside and the order dated 3 October 2022 passed by the Additional Commissioner is confirmed.

b) Consequently, the proceedings are remanded before the Collector for being decided afresh.

c) The Collector shall take into consideration the recommendations of ADTP dated 11 August 2021 while deciding the proceedings afresh. The Collector shall decide the proceedings afresh on its own merits without being influenced by any of the observations made by this Court in the present order.

d) Parties shall remain present before the Collector on 17 February 2025 and shall obtain necessary directions for conduct of hearing in the proceedings.

e) Till the Collector decides the proceedings, the Petitioner shall not put the construction for any use.

7) With the above directions, the Writ Petition is **partly allowed and disposed of**.

8) After the order is pronounced, Ms. Kapoor would pray for stay of this order for a period of 8 weeks. The request is opposed by Mr. D'souza. Considering the fact that the proceedings are merely remanded for being decided afresh by the Collector in the light of positive recommendations of ADTP dated 11 August 2021, I am not inclined to stay the order. Respondent No. 4 is not rendered remediless and can demonstrate before the Collector that the structure is incapable of being regularized. The request for stay is accordingly rejected.

[SANDEEP V. MARNE, J.]