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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2692 OF 2000

Bombay Environmental Action Group and Anr. ... Petitioners

Versus

State of Maharashtra and Ors. ... Respondents

Mr. Navroz Seerwai, Senior Counsel a/w Mr. Arif Doctor with Ms. Sheetal Shah and Ms. Meharunnis Tole I/by M/s. Mehta and Girdharlal for the Petitioners.

Mrs. R.A. Salunkhe, AGP for the Respondent Nos.1 to 3.

Mr. Jayant Mehta a/w Ms. Dimple Merchant and Mr. Aamir Sheikh I/by I.V. Merchant and Co. for the Respondent Nos.4 to 7.

Mrs. Sharmila U. Deshmukh for the Respondent No.8.

CORAM : A.S. OKA & RIYAZ I. CHAGLA, JJ.

DATE ON WHICH SUBMISSIONS WERE HEARD : 26.07.2018

DATE ON WHICH JUDGMENT IS PRONOUNCED : 01.11.2018

JUDGMENT (PER A.S. OKA, J.):-

1 By this petition under Article 226 of the Constitution of India, the petitioners have invited attention of the Court to the alleged illegal construction carried out by the fourth to seventh respondents. The case of the petitioners is that illegal construction carried out by the said respondents is in violation of the Coastal Zone Regulations of the year 1991 (for short "the CRZ Regulations). It is alleged that the construction has been carried out without obtaining permission of the Planning Authority under the Maharashtra Regional and Town Planning Act, 1966 (for short "the MRTP Act") as well as from the Competent Authority under the Maharashtra Land Revenue Code, 1966 (for short "the said Code"). By placing on record the photographs, the petitioners

pointed out that huge illegal construction was commenced by the concerned respondents on the land bearing Gat No.334 (Old Survey No.100) of village Kolegaon, District Raigad (for short “the said land”). It is alleged that the said land abuts sea coast.

2 We must note here that this writ petition is in the nature of a Public Interest Litigation. It is stated in the petition that the first petitioner is a Society registered under the Societies' Registration Act, 1860. Its main object is to look after the environment. It is pointed out that the first petitioner has filed many litigations in this Court as well as before the Apex Court on the issues of environment and the Courts have recognised the status of the first petitioner as a responsible and well-established public interest group. It is pointed out that the second petitioner is an activist associated with the first petitioner.

3 It is pointed out that a Regional Plan under the provisions of the MRTP Act for the extended Mumbai Metropolitan Region (Pen – Alibag) 1981 – 2001 (for short “the said Extended Regional Plan”) was sanctioned. It is pointed out that the said Extended Regional Plan, describes beauty of coastal belt near Alibag. It is pointed out that after the re-commissioning of Mandva Jetty near Alibag, there have been large number of illegal constructions in that area. It is pointed out that the illegal constructions are endangering fragile natural eco-system of the environment. A reference is made to the directions issued by this Court in two writ petitions directing demolition of illegal constructions in the region of Pen- Alibag.

4 It is alleged in the petition that on 8th February 1999, the fourth respondent in his capacity as the Karta and Manager of Ashok Gurudas Mittal, HUF purchased the said land. It is alleged that the sale deed records that the said land admeasuring 5 Acres and 19 Gunthas is

having two structures. It is alleged that immediately after purchasing the said land, the fourth respondent started construction on the said land which was illegal and which was being carried out in flagrant violation of law.

5 It is pointed out that the petitioners have taken photographs of the illegal construction which are annexed to the petition as Exhibit – A. It is stated that the size of the construction of the building/ bungalow exceeds 4000 square feets and the 7/12 extract of the said land shows that a farm house existed on the said land before 1st August 1986 having size of 29 meters x 27 meters x 7 meters. It is alleged in the petition that a part of the construction carried out by the seventh respondent falls within 200 meters of High Tide Line. It is alleged that construction is in violation of CRZ regulations, provisions of MRTP Act and the provisions of the said Code. Reliance is placed on paragraph 6(2) of the CRZ regulations. It is pointed out that a part of the construction is within 200 meters of HTL and remaining part is within the distance of 200 – 500 meters. It is pointed out that construction of dwelling unit between 200 – 500 meters of HTL is permitted so long as it is within the ambit of traditional rights and customary uses such as existing fishing villages and gaothans. It is alleged that building permission for such construction will be subject to condition that total number of dwelling units shall not be more than twice the number of existing units, total covered area of all floors shall not exceed 33 % of the plot size, overall height of the construction shall not exceed 9 meters and construction shall not be of more than 2 floors (ground plus one). It is alleged that as far as construction falling within 200 meters of HTL is concerned, there is a complete prohibition.

6 As regards violation of MRTP Act, it is pointed out that the Extended Regional Plan came into force from 1st August 1985. The Development Control Regulations (for short “DCR”) are part of the Extended Regional Plan. It is pointed out that as the said land is a part of the Extended Regional Plan, obtaining development permission under section 45 of the MRTP Act was mandatory which has not been obtained. As regards the violation of the said Code, it is alleged that apart from the fact that permission of the Collector was required and not obtained as per the provisions of the said Code, construction only to the extent of 150 square meters was permitted.

7 First three prayers in the writ petition are material which read thus :-

- “(a) that this Hon'ble Court be pleased to declare the impugned construction to be in violation of the CRZ Notification, the MRTP Act and the MLRC, and therefore illegal and void.
- (b) that this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, order or direction under Article 226 of the Constitution of India, directing Respondent No.1-3 to forthwith demolish the illegal construction raised by Respondent No.4-7.
- (c) that this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, order or direction under Article 226 of the Constitution of India, restraining Respondent Nos.1 – 3 from in any manner regularising the illegal construction.”

8 Shri Anil Patil, Sub-Divisional Officer of the Alibag Division has filed an affidavit dated 16th September 2000. In the said affidavit, it is pointed out that an application dated 27th April 1998 was made by one Shri Rakesh Lamba along with three others for carrying out repairs

to the farm house as well as for construction of water-tank on the said land. It is stated that the report dated 15th May 1998 as well as the report dated 2nd December 1998 were submitted. He further stated that it was recorded in the reports that there was no construction on the said land and plinth of old farm house admeasuring around 24 meters x 21.4 meters was existing. It is recorded that permission dated 4th December 1998 was granted subject to conditions mentioned therein. It is stated in the affidavit that the outer border of the said land falls within 200 meters from HTL and remaining portion falls within the distance of 200 – 500 meters from HTL. It is stated that the construction put up on the said land exceeded the area for which permission was granted. It is stated that his office had granted permission for putting up construction/repairs on the said land to the extent of 514 square meters, but construction admeasuring 1407 square meters has been carried out. It is stated that accordingly notices under the said Code have been issued. He has stated that there was a plinth of old structure situated on the said plot and that even the Gram Panchayat assessment record shows existence of only an old shed. It is stated that repair permission granted by his office relates to portion of said land beyond 200 meters of HTL. He reiterated that notice under section 45 of the said Code has been issued for the violation.

9 In the same affidavit, there is a specific reference to the application dated 18th July 2000 filed by the fourth respondent under section 47(B) of the said Code for regularising the said excess construction. In fact, in the said application, the fourth respondent admitted excess construction put up by him. It is stated that on 11th August 2000, the fourth respondent filed another proposal for putting up a Holiday Resort on the said land and in the same application, he requested regularisation of the construction put up by him. The fourth

respondent submitted a letter dated 5th August 2000 issued by the Maharashtra Maritime Board stating that the HTL line was at a distance of 287 meters from the plinth. A report dated 8th September 2000 was submitted by the Town Planning Department stating that construction of Beach resort between 200 – 500 meters from HTL was permissible subject to obtaining necessary permission from the Ministry of Environment and Forest of the Government of India. It is specifically mentioned that the said land falls in CRZ-III area and therefore, limited development as stated in the affidavit can be permitted.

10 A copy of the order dated 4th December 1998 issued by the District Collector has been annexed to the affidavit. It records that there were two plinths on the said land admeasuring 24 meters x 21.45 meters on the eastern side and 6.30 x 5 meters from the western side. It is stated that the plinth on the western side was within a distance of 184 meters from HTL of the sea. A permission was granted under the said order to repair/ reconstruct the house on the plinth admeasuring 24 meters x 21.45 meters on the eastern side subject to various conditions included therein.

11 The fourth respondent filed an affidavit dated 19th September 2000 contending that the said property abuts a creek and not the Sea. It is submitted that it is at a distance of more than 100 meters from the HTL and the construction in question is at a distance of more than 200 meters from HTL. It is admitted that the fourth respondent has applied for regularisation under section 47(B) of the said Code on 19th July 2000 and that on 11th August 2000 the fourth respondent had applied for regularising the construction for Holiday Resort. It is contended that construction put up on the said land is permissible in accordance with law. The petitioners filed an affidavit

dated 3rd October 2000 dealing with the affidavit of the Sub-Divisional Officer of the fourth respondent. It is pointed out in detail as to how construction carried out is contrary to the order dated 4th December 1998 passed by the Collector. On 8th August 2008, the fourth respondent filed an affidavit. It is contended that Civil Application No.1642 of 2001 has been ordered to be heard along with the main writ petition.

12 Before we refer to the further affidavit, we must make a reference to the orders passed by this Court from time to time. On 3rd October 2000, the First Court issued Rule and passed the following order :-

- “ Rule. Respondents waive service.
2. We pass an interim order in the following terms :
- (i) Pending disposal of the Rule, the proceedings pending before the authorities, inter alia, the Government of Maharashtra or the Government of India may be concluded in accordance with law. Any party aggrieved by orders passed in those proceedings is at liberty to challenge those orders in accordance with law. Any construction which has been made, or may be made, during the pendency of this Writ Petition will be subject to the result of the Writ Petition and it shall not be pleaded as an equity that the construction has already been substantially raised or completed.
- (ii) Respondents No.4 to 7 shall not part with possession or alienate any part of the property without the prior approval of this Court.
- (iii) On the pending proceedings before the concerned authorities, if the Petitioners wish to intervene, they shall be allowed to do so. In addition, Respondents No.4 to 7 shall give notice to the Petitioners of the proceedings initiated before any forum in relation to the structure in question.”

13 It appears that the said order was challenged by the petitioners by filing a Special Leave Petition which was disposed of by an order dated 30th April 2001 by the Apex Court. The Apex Court directed that the order dated 3rd October 2000 stood set aside and further directed that pending further orders by this Court, the parties shall maintain status-quo and no construction shall be commenced or continued without permission of this Court. The said order continues to hold the field till today.

14 On 15th March 2018, this petition was called out for final hearing when submissions of the learned senior counsel appearing for the petitioners were fully heard. However, hearing was adjourned on the request made by the learned counsel appearing for the fourth to seventh respondents who was permitted to take photocopies of the pleadings and documents on record. On 23rd March 2018, an amendment in terms of the draft amendment tendered on record was permitted for raising a contention that the said land and the structure thereon will be affected by CRZ Regulations. By the said order, the eighth respondent was directed to file affidavit stating whether the said land and structure is affected by CRZ Notification 1991. An affidavit was filed on 23rd April 2018 on behalf of the eighth respondent by Shri Sanjay Sandanshiv in which it is stated the structure constructed on the said land falls in CRZ – III area but the authority was not in position to ascertain the distance between the structure and HTL. There is an affidavit filed by Shri Ashok Mittal, fourth respondent, which is dated 18th June 2018 in which reliance was placed on several documents. A contention is raised that the said land was abutting Dharamtar Creek and not the sea.

15 The learned senior counsel appearing for the petitioners has taken us through the petition, the documents annexed to the petition and affidavits on record. By inviting our attention to various documents on record and in particular Exhibit – 1 to the reply of Shri Anil Patil, he pointed out that in 1998, a limited repair permission was granted on a plinth admeasuring 24 meters x 21.5 meters with a specific condition that the house should be in a traditional form and under any circumstances, the height thereof should not be more than 5 meters from the plinth. He submitted that admittedly the fourth respondent exceeded the permission granted and therefore, notices were issued to the fourth respondent. He pointed out that the applications dated 18th July 2000 and 11th August 2000 made by the fourth respondent for regularisation have been rejected. He submitted that the application made for regularisation under section 52A of the MRTP Act will not be maintainable. He also pointed out the manner in which undue advantage was taken by the fourth to seventh respondents of the leniency shown by this Court by making an application for regularisation after this Court granted adjournment at their instance. He made submissions on the issue whether the said land abuts creek or sea. However, we are not reproducing the said submissions inasmuch as for the reasons set out, we are not deciding the said issue.

16 The learned senior counsel appearing for the fourth to seventh respondents made detailed submissions on various documents in support of his plea that the said land abuts Dharamtar Creek and not the sea as contended by the petitioners. He invited our attention to the Maharashtra Town Planning (Compounded Structures) Rules, 2017 (for short “the Compounded Structure Rules”) under which all illegal constructions made upto 31st December 2015 can be regularised. He

submitted that writ Court cannot grant any relief which will take away right of the fourth respondent of seeking compounding/regularisation under the said Rules. He would, therefore, submit that in view of pendency of application for regularisation, no relief of demolition can be granted and writ petition will have to be dismissed. We have also heard the submissions of the learned counsel for the eighth respondent who has mainly made submissions on the issue regarding applicability of CRZ Regulations to the said land.

17 We have given careful consideration to the submissions. To the affidavit-in reply dated 16th September 2000 of Shri Anil Patil, Sub-Divisional Officer, Alibag Sub-Division, a copy of the order/permission dated 4th December 1998 issued by the Collector has been annexed. It is in respect of the said land. The gist of the said permission is as under :-

- A] An application was made by Shri Rakesh Lamba and three others on 2nd May 1998 for construction of a house and a farm house on the said land and for erection of a water tank;
- B] On the basis of the said application, a report of Tahsildar, Alibag was called who has stated in the report that no building is standing on the said land. However, there are two plinths in existence; the plinth on the eastern side admeasures 24 meters x 21.45 meters and the plinth on the western side admeasures 6.30 meters x 5 meters;
- C] In view of sub-section (3) of section 41 of the said Code, a permission is granted to Rakesh Lamba and others only for carrying out repairs to the house only on one of

the two plinths admeasuring 24 meters x 21.45 meters on the eastern side;

D] The said permission was granted subject to 12 conditions incorporated therein. The important conditions are as under :-

- (a) the repaired house shall be used only for residence and for storing the implements of agriculture;
- (b) the house should be a traditional house and under no circumstances, the height of the house shall exceed 5 meters from the plinth;
- (c) No new construction shall be carried out and in the event of breach of the terms and conditions, the permission shall be liable to be revoked.

18 A copy of report dated 2nd December 1998 submitted by the Tahsildar which is referred in the order of the Collector is also annexed. It appears that the said Rakesh Lamba and three others are the predecessors in title of fourth to seventh respondents.

19 In the affidavit of the fourth respondent filed for himself and on behalf of fifth to seventh respondents, which is dated 19th September 2000, it is accepted that prior to 8th December 1999, the said Rakesh Lamba and three others were the owners of the said land. The fourth respondent has relied upon the permission/order dated 4th December 1998 of the Collector. Thus, the conditions in the said permission/order bind the fourth to seventh respondents. In the affidavit-in-reply itself, the fourth respondent has pointed out that on 14th February 2000, Additional Tahasildar (N.A.), Raigad issued a notice to him alleging that he has carried out construction

admeasuring 2200 square meters without obtaining permission under section 44 of the said Code. A copy of the said notice is produced on record. The said notice refers to earlier notice issued by the Additional Tahsildar on 20th January 2000 alleging that without seeking permission under section 44 of the said Code, unauthorised user has been commenced. On 15th May 2000, a notice was served to the fourth respondent by the Sub-Divisional Officer, Alibag alleging that though on 4th December 1998, a permission was granted to repair the house admeasuring 514 square meters on the plinth admeasuring 24 meters x 21.45 meters, the fourth respondent has carried out illegal construction admeasuring 1407.40 square meters. The said notice refers to the reply dated 9th March 2000 submitted by the fourth respondent in which he accepted that he has carried out excess construction and in fact stated that he was taking steps to regularise the same. By the said notice. the Sub-Divisional Officer called upon the fourth respondent to remove the illegal construction.

20 A copy of the application dated 17th July 2000 made by the fourth respondent to the District Collector is on record in which he has specifically stated that the office of the Collector had granted him repair permission but he has carried out construction which is more than what is permissible. He, therefore, sought regularisation subject to payment of fine/ penalty. As stated in the affidavit-in-reply of the fourth respondent, on 11th August 2000, he made one more application to the District Collector stating that construction carried out is of a Holiday Resort and therefore, the said construction be regularised. By a letter dated 29th December 2001, the District Collector informed the fourth respondent that the applications dated 18th July 2000 and 11th August 2000 have not been accepted and the same have been disposed of. The said letter is

in Marathi language. The learned counsel appearing for the fourth to seventh respondents tried to submit that the said letter dated 29th December 2001 shows that the applications are pending. The said submission is completely erroneous inasmuch as the letter specifically records that the request made by the said applications was not accepted and the applications shall be treated as disposed of. Therefore, the only conclusion which can be drawn is that the fourth to seventh respondents carried out illegal construction contrary to the permission dated 4th December 1998 granted to their predecessors-in-title. This fact is accepted by the fourth to seventh respondents in their application for regularisation. As stated earlier, the permission was granted on 4th December 1998 for repairs of a house on one of the two plinths. A condition was imposed that the house should be constructed in the traditional manner and its height cannot exceed 5 meters under any circumstances. Second application for regularisation made by the fourth respondent clearly accepts that what is constructed is intended to be used as a holiday resort. From the photographs which are tendered on record which are not disputed, the construction appears to be a multi-storied construction and obviously, the height exceeds 5 meters from the plinth.

21 Now, we come to the application for regularisation made by the fourth respondent under section 52A of the MRTP Act. A copy of the said application is annexed to the rejoinder of the fourth respondent to the affidavit of the eighth respondent. The said application is dated 12th April 2018 addressed to the Collector which specifically refers to section 52A of the MRTP Act and the Compounded Structure Rules. Perusal of the Compounded Structures Rules show that the same have been enacted mainly in

exercise of powers under sub-section (1) of section 52-A of the MRTP Act. Section 52-A reads thus :-

“52A. Provisions relating to certain developments as compounded structure -

(1) Notwithstanding anything contained in this Act or any other law, for the time being in force, or in any judgment, order or direction of any Court where unauthorised development has been carried out on or before the 31st December 2015, in the area of Development Plan, the State Government may, upon the request of the Planning Authority, specify the terms and conditions, not inconsistent with the rules made in this behalf, on compliance of which and the compounding charges, infrastructure charges and premium on payment of which, the Planning Authority may declare such development as compounded structure.

(2) On declaration of such development as compounded structure under sub-section (1), no further proceedings under any law for the time being in force against the owner or occupier of such structure shall be taken or continued :

Provided that, no further development shall be permissible in any compounded structure, other than repairs and maintenance, and any development or reconstruction of such structure shall be only as per the provisions of the prevailing Development Control Regulations.”.

(underline supplied)

On plain reading of sub-section (1) of section 52-A, the provision regarding declaring unauthorised development as compounded structure is applicable only in the area of development plan. The term “development plan” is defined in sub-section (9) of section 2 of the MRTP Act which reads thus :-

“(9) “Development plan ” means a plan for the development or re-development of the area within the jurisdiction of a Planning Authority and includes revision of a development plan and proposals of a special planning

Authority for development of land within its jurisdictions;

(underline supplied)

22 The “Planning Authority” is defined in sub-section (19) of section 2 which reads thus :-

“(19) “Planning Authority ” means a local authority; and shall include,—

- (a) a Special Planning Authority constituted or appointed or deemed to have been appointed under section 40; and
- (b) in respect of the slum rehabilitation area declared under section 3C of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, the Slum Rehabilitation Authority appointed under section 3A of the said Act;]”

23 The “local authority” is in turn defined under sub-section (15) of section 2 which reads thus :-

“(15) “local authority” means -

- (a) the Bombay Municipal Corporation constituted under the Bombay Municipal Corporation Act or the Nagpur Municipal Corporation constituted under the City of Nagpur Municipal Corporation Act, 1948, or any Municipal corporation constituted under the Bombay Provincial Municipal Corporations Act, 1949,
 - (b) a Council and a Nagar Panchayat constituted under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965,]
 - (c)(i) a Zilla Parishad constituted under the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961,
 - [(ii) the Authority constituted under the Maharashtra Housing and Area Development Act, 1976],
 - (iii) the Nagpur Improvement Trust constituted under the Nagpur Improvement Trust Act, 1936,]
- which is permitted by the State Government for any area under its jurisdiction to exercise the powers of a Planning Authority under this Act;”

24 Going back to sub-section (9) of section 2 which defines a development plan, it means a plan for development of the area within the jurisdiction of a Planning Authority which will include revision of such development plan. Secondly, the development plan will include a proposal of Special Planning Authority for development of land within its jurisdiction. Section 40 provides for the State Government appointing a Special Planning Authority for a notified area. Section 40 reads thus :-

“40. Special Planning Authority for developing certain notified areas-

(1) The State Government may, by notification in the Official Gazette for any undeveloped area specified in the notification in this Act referred to as “the notified area” either -

(a) constitute an authority consisting of a Chairman, a Vice-Chairman, a member of the Maharashtra Legislative Assembly representing the notified area, one member representing the municipal area, if any, included in the notified area, the Deputy Director of Town Planning, and the Executive Engineer, Public Health Works Division, each having jurisdiction over the notified area, and an officer not below the rank of an Assistant Collector; or

(aa) appoint the Authority constituted under the Maharashtra Housing and Area Development Act, 1976, or

(b) appoint any Development Authority declared under sub-section (3A) of section 113; or

(c) appoint the Bombay Metropolitan Region Development Authority established under the Bombay Metropolitan Region Development Authority Act, 1974, to be the Special Planning Authority for developing the notified area; or

(d) appoint the Metropolitan Region Development Authority established under the Maharashtra Metropolitan Region Development Authority Act, 2016.”

25 It is not the case of the fourth to seventh respondents that the said land is situated within the jurisdiction of any local authority as defined under sub-section (15) of section 2. It is not the case of the fourth to seventh respondents that the said land is situated within the jurisdiction of any Special Planning Authority as notified in section 40. It is not the case of the said respondents that the said land falls in the notified area for which a Special Planning Authority is constituted under section 40. As per sub-section (1) of section 52A, a request must come from the Planning Authority. Moreover, as per Compounded Structure Rules, applications for compounding have to be made to the Planning Authority. In the present case, the said land is not situated in the area of a development plan and therefore, sub-section (1) of section 52A will have no application. Application for declaring the structure on the subject land as compounded structure has been made by the fourth respondent to the District Collector. The said application is not maintainable as sub-section (1) of section 52A is not applicable to the said land.

26 The argument of the learned counsel appearing for the fourth to seventh respondents was that this Court cannot prevent the said respondents from prosecuting the application under section 52A of the MRTP Act. However, the said provision is not applicable to the said land. A writ Court could not have decided the question whether the structure could be regularised under section 52A. However, writ Court can certainly decide whether the said section which provides for compounding of structure is applicable. Thus, the scenario which emerges today is that two applications for regularisation made by

the fourth respondent in the year 2000 have been rejected by the communication dated 29th August 2001 issued by the District Collector. The said order of rejection of regularisation application has become final. In fact, against the said order, an appeal was preferred by the fourth respondent which was not pressed by the fourth respondent. Notwithstanding the rejection way back in the year 2001, action of demolition of the structure was not taken. Only after this petition was substantially heard and was adjourned at the instance of the fourth to seventh respondents, application dated 12th April 2018 was made under section 52A. This conduct of the said respondents has to be taken note of. They have indulged in gross illegality.

27 As pointed out earlier, admittedly only one permission dated 4th December 1998 granted by the Collector operates in the field. Admittedly, the fourth respondent to seventh respondents has carried out construction in excess of what is permitted. As pointed out earlier, the construction was permitted on the plinth area of 24 meters x 21.45 meters and maximum height permitted was 5 meters from the plinth. Admittedly, the fourth to seventh respondents committed breaches of the terms and conditions in the said order.

28 The question whether the said land abuts the sea or Dharamtar Creek is a disputed question. In any case, the said question is not required to be decided in this writ petition. Therefore, the question whether the said land was affected by CRZ Regulations of 1991 or 2011 is expressly kept open.

29 We propose to grant a reasonable time to fourth to seventh respondents to restore the structure on the said land in terms of the permission granted on 4th December 1998. On the failure of the said respondents to restore the structure by carrying out necessary demolition and modification within the stipulated time, the Collector will have to demolish the requisite part of the said structure. If the structure is constructed in such manner that a part cannot be demolished, it will be open for the Collector to demolish the entire structure. We make it clear that the said permission dated 4th December 1998 contemplates construction of a house of traditional nature.

30 Accordingly, we dispose of the petition by passing the following order :-

ORDER

- (i) In view of admitted position that the fourth to seventh respondents have constructed the structures in excess of what is permitted under the order dated 4th December 1998 passed by the Collector, we grant time of three months from today to the said respondents to restore the structure to the extent permitted under the order/permission dated 4th December 1998;
- (ii) On failure of the fourth to seventh respondents to comply with the above directions within the stipulated time, the Collector of District Raigad shall take action of demolition of the construction which is carried out in excess of what is permitted under the permission dated 4th December 1998. If the Collector finds that it is not possible to demolish only a part of the structure, it will

be open for him to demolish the entire structure. In such event, the fourth to seventh respondents will be entitled to reconstruct the structure in terms of order/permission dated 4th December 1998;

- (iii) Rule is made partly absolute on above terms;
- (iv) For reporting compliance by the fourth to seventh respondents and/or by the Collector, the petition shall be listed on 20th March 2019.

(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)