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

WRIT PETITION NO.6637 OF 2012

Kumar Pokardas Sukheja

..Petitioner

-Versus-

Ulhasnagar Municipal Corporation
& Ors.

..Respondents

.....

Mr. Dnyaneshwar Deshmukh for the Petitioner.

Mr. V. S. Gokhale, AGP, for the Respondent Nos.2 and 3.

Mr. Ashok P. Valecha, Respondent No.4 in person.

.....

**CORAM: A. S. OKA AND
REVATI MOHITE DERE, JJ.**

DATE :- 24th JUNE 2015.

PC.:

Heard the learned counsel appearing for the Petitioner, the learned counsel representing the 1st respondent, learned AGP appearing for the 2nd and 3rd respondents and the 4th respondent appearing in person. The 4th respondent states that long back he has applied for legal aid.

2] This petition under Article 226 of the Constitution of India has been filed for seeking a writ of mandamus for directing the 1st respondent-Municipal Corporation to take action of demolition of the alleged illegal structure erected by the 4th respondent. A writ of mandamus is sought

against the 1st respondent to take action on the basis of communications at Exhibit G and N to the Petition.

3] There is an affidavit in reply filed by Shri Ramesh Bhedane, Assistant Commissioner of 1st respondent of the Municipal Corporation. In reply, it is stated that the Municipal Corporation has carried out the work of demolition of illegal construction on open land/passage made by the 4th respondent on 31/8/2013. It is stated that even FIR alleging commission of an offence under Maharashtra Regional and Town Planning Act, 1966 has been registered.

4] There is an affidavit in rejoinder filed by the petitioner. It is contended that notwithstanding the stand taken in the affidavit in reply, the entire illegal constitution has not been demolished and moreover, after demolition, further illegal construction has been carried out by the 4th respondent. Photographs of the alleged construction made by the 4th respondent are annexed to the rejoinder.

5] Considering the controversy involved in the petition, we pass the following order:-

(a) We direct the designated officer of the concerned ward appointed under the Maharashtra Municipal Corporations Act, 1949 to visit the site in question to ascertain whether further illegal construction has been carried out by the 4th respondent and whether entire

illegal construction earlier made by the 4th respondent has not been demolished. The designated officer shall visit the site in question within a period of two weeks from the date on which an authenticated copy of this order is produced by the petitioner in the office of the Commissioner of 1st respondent;

- (b) If the designated officer finds that any illegal construction has been carried out by the 4th respondent, he shall initiate an appropriate action for demolition of the illegal construction in accordance with law;
- (c) We make it clear that the action of demolition shall not be taken without giving an opportunity of being heard to the 4th respondent;
- (d) All contentions of the parties on merits are kept open.
- (d) The Petition is disposed of on above terms.
- (e) 1st respondent to act upon an authenticated copy of this order.

(REVATI MOHITE DERE, J.)

(A. S. OKA, J.)