

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

WRIT PETITION NO.10166 OF 2014

Teddy Wilfred D'souza

.. Petitioner

Versus

The Mumbai Municipal Corporation and another

.. Respondents

Ms. Eventa A. Gonsalves, for the Petitioner.

Ms. Pallavi Thakar, for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 26th JUNE, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 03.11.2014 passed by the Assistant Engineer (Building), K/W Mumbai, by the said order the notice under Section 351 issued by the Respondent No.1 alleging the unauthorized construction of toilet block and compound wall came to be confirmed. The Petitioner claims to be the owner of land bearing CTS No.1406 of Vile Parle (W). A notice came to be issued under Section 351 of the Mumbai Municipal Corporation Act on 16.10.2014 and the allegation against the Petitioner was that the Petitioner has carried out construction of a toilet block with brick masonry walls and AC Sheets roof admeasuring 10' 12" X 4' 6'. It was also alleged that the Petitioner has constructed a compound wall of 45 ft. in length and

4 ft. height on CTS No.1407 of Village Vile Parle. The said notice called upon the Petitioner to reply within seven days on the receipt of the same. It is the case of the Petitioner that he received the notice on 17.10.2014 and since he was seriously unwell with high blood pressure, hyper tension, acute acidity and periorbital swelling did not reply to the said notice. However, prior thereto the Respondent No.2 herein i.e. the Designated Officer passed an order confirming the notice on the ground that no cause was shown against it by the Petitioner.

2. It is required to be noted that to the above Petition have been annexed documents in support of the Petitioner's case that he was suffering from an eye ailment. The said documents are from page No.90 onwards which indicate that he was being treated at Lotus Eye Hospital, Juhu Mumbai in the out patients department. It is also the case of the Petitioner which he has stated in his reply dated 11.11.2014 that the construction i.e. put up in CTS No.1406 and that no construction has been put up in CTS No.1407 which is an open plot of land. In my view, in the light of the fact that the notice was received by the Petitioner on 17.10.2014 and that the Petitioner being unwell could not respond to it within the time stipulated in the said notice an opportunity is required to be given to the Petitioner, so that his case can be considered by the Designated Officer i.e. Respondent No.2. The impugned order is

accordingly set aside. The Designated Officer would hear the Petitioner on the date that is stipulated in the instant order. The Petitioner would appear before the Designated Officer on 09.07.2015 at 3.00 p.m. The Designated Officer would hear the matter and would also take into consideration the documents that would be produced by the Petitioner. The said proceeding would be considered by the Designated Officer on its own merits and in accordance with law uninfluenced by the earlier adjudication. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute. The Petitioner would be at liberty to file further documents in support of their case.

[R.M. SAVANT, J]