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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO.161 OF 2015
IN
PUBLIC INTEREST LITIGATION NO.40 OF 2013**

Omprakash Hazarimal Nawal	... Applicant
In the matter between	
Mohammad Kasim Abdul	... Petitioner
Versus	
Union of India and Ors.	... Respondents

Mr. D.S. Sakhalkar i/by Suresh P. Patil, for the Applicant.

Mrs. Neeta V. Masurkar a/w Mr. A.M. Sethna, for the Respondent No.1 – Union of India.

Mr. Vinod Mahadik, for Respondent – BMC.

Ms. Geeta Shastri, Additional Government Pleader a/w Mr. V.S. Tiwari, AGP, for Respondent Nos.2 to 3 and 5 to 7.

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

DATE : 14th JULY, 2015

PC.

. Heard the learned counsel appearing for the Applicant. In the main PIL on 21st March, 2013, the following order was passed by the first Court :-

- “1. Learned counsel for the petitioner states that in view of the order dated 25 February 2013 the petitioner is taking steps for forming an association of the occupants of buildings in refugee colonies.

2. In view of the above, hearing is adjourned to 25 April 2013. Ad-interim relief granted earlier shall continue on the same terms and conditions, that is to say the Corporation shall not implement or execute any notice for demolition in case of a person who files an undertaking before the Municipal Corporation of Greater Mumbai along with a photograph of the existing construction and that (i) he shall not put up any further construction, and that (ii) he shall participate in the redevelopment project.
3. We make it clear that it will be open to the Municipal Corporation to implement and execute the notice of demolition of unauthorised structures, where no such undertaking is filed before the Municipal corporation.”

(Underline supplied)

2. The Applicant is seeking to intervene in this PIL by contending that now he is willing to file an undertaking before the Municipal Corporation in terms of paragraph 2 of the aforesaid order.

3. It appears that the Applicant started construction of brick walls and therefore, notices dated 27th February, 2013 and 12th March, 2013 were issued by the Municipal Corporation to the Applicant. On 15th March, 2013, another notice was served to the Applicant recording that the Applicant is constructing brick masonry walls. It appears that on 30th July, 2013, the Applicant made an application to the Deputy Collector (Removal of Encroachment) seeking no objection for construction of a house on the ground that the original structure of the house was in dilapidated condition. It is pertinent to note that though a

copy of the said letter was forwarded to the Deputy Commissioner, Zone – 5 of the Municipal Corporation, the Applicant did not point out that he has been served with the three notices under Section 354A of the said Act of 1888 in February and March, 2013.

4. In paragraph 7 of the affidavit-in-support, the Applicant has stated that his structure was partly demolished on 4th April, 2013. This fact is suppressed by the Applicant while making aforesaid application to the Deputy Collector. By a communication dated 22nd October, 2013, the Municipal Corporation informed the Applicant that he has not furnished undertaking in terms of the order of this Court dated 21st March, 2013. Moreover, it is stated that after following due process of law, illegal construction made by the Applicant has been demolished. Therefore, the application for carrying out repairs has been rejected by the Municipal Corporation.

5. When application dated 30th July, 2013 was made by the Applicant, even according to his case, in April, 2013, substantial part of his structure was already demolished. The said fact was suppressed by the Applicant and he merely applied for grant of permission to repair the house. We, therefore, see no error in the action of the Municipal Corporation of rejecting the said application.

6. After demolition of his structure, if the Applicant wants to construct a structure, he will have to make a regular application for grant of permission to the Mumbai Municipal Corporation in accordance with the Maharashtra Regional and Town Planning Act, 1966 and relevant Development Control Regulations. If such application is made, the Municipal Corporation will have to consider the same in accordance with law after taking into consideration the orders passed in the main PIL.

7. Subject to what is observed, no case is made out for grant of any relief in the Chamber Summons. Accordingly, Chamber Summons is dismissed.

(REVATI MOHITE DERE, J)

(A.S. OKA, J)