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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
PUBLIC INTEREST LITIGATION NO.11 OF 2013**

Radheyshyam Brahamdev Mishra	... Petitioner
Versus	
Municipal Commissioner and Ors.	... Respondents

**WITH
NOTICE OF MOTION NO.294 OF 2014
IN
PUBLIC INTEREST LITIGATION NO.11 OF 2013**

Jayantilal Hastimalji Jain	... Applicant
<u>In the matter of</u>	
Radheyshyam Brahamdev Mishra	... Petitioner
Versus	
Municipal Commissioner and Ors.	... Respondents

**WITH
CHAMBER SUMMONS NO.192 OF 2013
IN
PIL WRIT PETITION NO.11 OF 2013**

Radheyshyam Brahamdev Mishra	... Petitioner
Versus	
Municipal Commissioner and Ors.	... Respondents

**WITH
NOTICE OF MOTION (ST.) NO.524 OF 2013
IN
PUBLIC INTEREST LITIGATION NO.11 OF 2013**

Radheyshyam Brahamdev Mishra	... Applicant
Versus	
Municipal Commissioner and Ors.	... Respondents

Ms. Nisha Mehra i/by M/s. M.K. Jain & Associates, for the Petitioner and for the Applicant in Chamber Summons No.192 of 2013 and Notice of Motion (St.) No.524 of 2013.

Ms. Trupti Puranik, for the Respondent – BMC.

Mr. V.M. Parshurami, for the Respondent Nos.3 and 5.

Mr. Pradeep J. Thorat, for the Respondent No.8 and for Applicant in Notice of Motion No.294 of 2014.

Mr. J.S. Saluja, AGP, for proposed Respondent.

Mr. Satish U. Upadhye, for the proposed Respondent.

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

DATE : 14th JULY, 2015

PC.

. Heard the learned counsel appearing for the Petitioner, the learned counsel appearing for the Respondent Nos.1 and 2, the learned counsel appearing for the Respondent Nos.3 to 5 and the learned counsel appearing for added Respondent No.8. The learned AGP represents the Public Works Department of the State Government. The grievance in this PIL is as regards the illegal construction made in building No.46/48, Champagalli, Kalbadevi, Mumbai 400 002.

2. By order dated 13th February, 2013, the first Court directed action to be taken under Section 53 of the Maharashtra Regional and Town Planning Act, 1966 (for short “MRTP Act”). On the basis of the said order of this Court, a notice dated 23rd February, 2013 which was dispatched on 2nd March, 2013 was issued under Sub-section (1) of Section 53 of the MRTP Act. Notice was issued to several persons calling upon them to remove the unauthorised construction mentioned in the schedule. The schedule to the said notice reads thus :-

“SCHEDULE
(Description of Work)

Unauthorized construction of building comprising to Gr. + Mezzanine + 8 upper flrs. at 46/48, Champagalli, Vithalwadi, Kalbadevi Road, Mumbai – 400 002, as per Hon. High Court's orders in the PIL bearing No.11/2013

Mr. Jayantilal H. Jain
Room No.801, 8th Floor,
46/48, Champagalli,
Vithalwadi, Kalbadevi Road,
Mumbai : 400 002.
Date : 23/02/2013

Signature :
Name : Smt. Dr. Sangeeta Hasnale
Designation : Assistant Commissioner 'C' Ward.”

3. A notice was also issued to the added Respondent No.8 Jayantilal H. Jain. It appears from the affidavit-in-reply of Shri N.M. Kotkar, Assistant Engineer of the Mumbai Municipal Corporation that on 16th March, 2013, the said Jayantilal filed certain documents to prove his case that the unauthorised structure was in existence prior to 1st April, 1962. After considering the said documents, the Assistant Commissioner, C-Ward passed order dated 6th April, 2013 rejecting the claim of the said Jayantilal. It appears that on 6th April, 2013 itself the Respondent No.8 Jayantilal submitted an application for regularisation through A.P. Dharia and Associates, a Licensed Surveyor. In the affidavit-in-reply, filed by the said Jayantilal in paragraph 39, he has accepted that application dated 6th April, 2013 was made. It is his

contention that the Licensed Surveyor informed him that the Sub-Engineer Ward officer is refusing to accept the proposal.

4. From the fact that the Respondent No.8 Jayantilal attempted to apply for regularisation on 6th April, 2013 shows that he has accepted that the structure subject matter of notice dated 23rd February, 2013 and order dated 6th April, 2013 is illegal and unauthorised.

5. As of 6th April, 2013, the Respondent No.8 tried to submit a proposal for regularisation through a Licensed Surveyor.

6. As the Respondent No.8 has accepted that the construction subject matter of the said notice and the said order is illegal, in view of Sub-Section (3) of Section 53 of the said Act of 1949, an opportunity deserves to be granted to the Respondent No.8 to apply for regularisation. The learned counsel appearing for the Petitioner invited our attention to Chamber Summons No.192 of 2013. It is her contention that on the basis of fabricated documents, the Respondent No.8 obtained electricity supply from BEST Undertaking. It is her contention that permission to install a lift was also obtained on the basis of fabricated documents. Therefore, a prayer is made for adding the BEST Undertaking, Mumbai Fire Brigade and Executive Engineer of the Public Works Department Section as party Respondents.

7. Before filing the Chamber Summons, the Petitioner did not make any grievance to the concerned authorities about the action taken by them on the basis of the documents which were allegedly fabricated documents. Though we are disposing of the PIL, it will be open for the Petitioner to make appropriate representation to the concerned authorities by pointing out that according to the case of the Petitioner, the documents produced by the concerned Respondents were fabricated.

8. Hence, we dispose of the Petition by passing the following order :-

ORDER

- (i) It will be open for the Respondent No.8 (Jayantilal Hastimalji Jain) to make an application for regularisation of the structure subject matter of notice dated 23rd February, 2013 in the prescribed format through a Licensed Surveyor/ Architect within a period of two months from today. If such application is presented by the Licensed Surveyor/ Architect of the Petitioner, the concerned officer (Executive Engineer, Building Proposal City, E-Ward) shall accept the said application;

- (ii) If appropriate application is not made by the Petitioner as aforesaid within the stipulated period of two months, on expiry of a period of two months, the Municipal Corporation shall take action of demolition on the basis of the notice dated 23rd February, 2013;
- (iii) If such application is submitted by the Petitioner within the stipulated period of two months, the concerned authority of the Municipal Corporation shall pass order thereon within a period of two months from the date on which the proposal is submitted. The order passed on the proposal be communicated to the Respondent No.8 or to the Licensed Surveyor/ Architect appointed by him;
- (iv) In the event, such proposal is submitted within a period of two months from today, action shall not be taken on the basis of notice dated 23rd February, 2013, till the date of communication of the order passed on the said proposal either to the Respondent No.8 or to his Licensed Surveyor/ Architect, whichever is earlier. If the order be adverse to the Respondent No.8, action on the basis of notice dated 23rd February, 2013 shall not be taken for a period of one month from the date of communication of the order either to the Respondent

No.8 or to his Licensed Surveyor/ Architect, whichever is earlier;

- (v) It will be open for the Petitioner to make appropriate representation to Bombay Electricity Supply and Transport Undertaking, the Fire Brigade Department of the Municipal Corporation and the Executive Engineer of the Public Works Department, Lift Section, Mumbai pointing out the alleged fabrication of documents by the Respondent Nos.5 to 8. If such a representation is made, concerned authorities shall take action thereon in accordance with law as expeditiously as possible;
- (vi) We make it clear that we have made no adjudication on the merits of the proposal for regularisation which will be submitted by the Respondent No.8 and all contentions thereon are kept open;
- (vii) PIL is accordingly disposed of. All pending Chamber Summons as well as Notices of Motion do not survive and the same are disposed of.

(REVATI MOHITE DERE, J)

(A.S. OKA, J)