

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

WRIT PETITION NO. 3448 OF 2016

Bechar Bau Patel

..Petitioner

v/s.

The Commissioner, Thane Municipal
Corporation & Anr.

..Respondents

Mr. A.G.Damle, Sr. Advocate i/b. R.D.Suryawanshi for the Petitioner.
Mr.N.R.Bubna for the Respondent nos.1 and 2.

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI,JJ.
DATED : OCTOBER 17, 2016.**

P.C.

1. Heard Mr. Damle, learned Counsel for the petitioner and Mr. Bubna, learned Counsel for the Commissioner, Thane Municipal Corporation. By this petition, the petitioner is challenging the order dated 7th August, 2015 passed by the respondent no.1 Commissioner. The said order is passed under Section 258 of the Maharashtra Municipal Corporation Act r/w. Rule 30 of the D.C.Rules, applicable to Thane City. By the said order, the building permission granted to

the petitioner is canceled. In absence of this order, the Executive Engineer, City Survey Department, issued notice dated 20.1.2016 under Section 260(1)(ii) of the Maharashtra Municipal Corporation Act, calling upon the petitioner to demolish the said building within fifteen days.

2. The petitioner contends that the impugned order dated 7.8.2015 is passed solely on the basis of the order dated 15th January, 2015 passed by the City Survey Officer, canceling the Mutation Entry No.55 and 56 dated 9th December, 2009. Mr. Damle, contends that the order of the City Survey Officer canceling the Mutation entry was challenged by the petitioner by filing an appeal before the District Superintendent of Land Records, Thane, under Section 247 of the Land Revenue Code. This appeal was allowed by order dated 16.9.2016. Copy of the said order is annexed at page 172 to the petition.

3. Mr. Bubna, learned Counsel for the respondent no.1 Commissioner does not dispute the fact that the building permission

granted to the petitioner was canceled solely on the basis of the order of the City Survey Officer canceling the mutation entry nos.55 and 56. He also does not dispute that in appeal filed by the petitioner, the order of the City Survey Officer is set aside and he is directed to take consequential action.

4. That apart, the said mutation entries were canceled by the City Survey Officer on the basis of the complaint of the Corporator. It is worth to be mentioned that the original owners who executed the sale deed in favour of the petitioner never objected this mutation entry. In appeal filed by the petitioner challenging the order of the City Survey Officer, the original owners gave no objection for setting aside the order of the city survey officer.

5. In the above circumstances, we are of the opinion that the impugned order cannot be sustained. Same is quashed and set aside. Consequently, the notice dated 20.1.2016 issued by the Executive Engineer, City Development Department under Section 260(1)(ii) of the Maharashtra Municipal Corporation Act also stands quashed and

set aside.

6. Corporation, to act on the authenticated copy of this order, duly signed by the Private Secretary of this Court.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)