

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1096 OF 2015

Kashmira P. Patel

..Petitioner

v/s.

The State of Maharashtra & Ors.

..Respondents

Mr. Hemant Ghadigaonkar for the Petitioner.

Mrs. Geeta Shashtri, AGP for the State.

Mrs. Geeta Joglekar for the BMC.

CORAM : RANJIT MORE &

SMT. ANUJA PRABHUDESSAI, JJ.

DATED : AUGUST 16, 2016.

P.C.

1. Heard learned Counsel appearing for the respective parties.
2. The Mumbai Municipal Corporation issued notice under Section 351 of the MMC Act, to the petitioner. The petitioner challenged the said notice by filing a suit. The petitioner also claimed interim relief. The same was refused by the City Civil Court. Against the said order, the petitioner filed Appeal from Order (St) No. 20767 of 2014 before the learned Single Judge of this Court. During the pendency of the appeal, the petitioner made a

statement that he will file application for regularization of the offending structure within a period of 12 weeks. On the basis of this statement, by order dated 19th August, 2014, the learned Single Judge directed the parties to maintain status quo in respect of the offending structure till decision of regularization.

3. During the period of 12 weeks, the petitioner did not file application for regularization. Therefore, the Municipal Corporation issued notice to the petitioner under Section 488 of the Mumbai Municipal Corporation Act. The petitioner has challenged this notice by filing the present petition.

4. The learned Counsel for the petitioner submits that the approved plan of the building is not available with him, and in the absence of the approved plan, he could not make the application for regularization. He submits that he had applied for the copy of the approved plan to the Corporation. However, he was told that the same is not traceable.

5. Initially, notice under Section 351 of the MMC Act was issued to the petitioner on the basis of the complaint of the society. As the petitioner approached the Court, it was for the petitioner to show

that the offending structure was in accordance with the approved plan. Since the petitioner has not made an application for regularization within the stipulated time of 12 weeks, in our opinion, the petitioner, now cannot seek to challenge the notice under Section 488 of the MMC Act.

6. Be that as it may, the record reveals that at the time of making statement before the learned Single Judge, the petitioner was aware that the record was not traceable with the Corporation, despite which he made a statement that he will prefer regularization application.

7. Taking the totality of the facts into consideration, we find no merit in the petition and the same is accordingly dismissed.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)