

Amk

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

WRIT PETITION NO. 175 OF 2017

Mr. Bharat Malshi Gala .. Petitioner
Vs.
Mr. Sanjeev Jaiswal, The Commissioner & Ors. .. Respondents

Mr. Sandesh Patil i/b Mr. Chintan Shah for the Petitioner.
Mr. N. V. Walavalkar, Sr. Advocate i/b Mr. A. R. Pitale for Respondent
Nos.1 to 5.
Ms. R. A. Salunke, AGP for the Respondent No.6-State.

CORAM : NARESH H. PATIL AND
M.S. KARNIK, JJ.
DATE : 11th JANUARY, 2017.

P. C. :

1. The Deputy Commissioner, Unauthorized Construction removal and encroachment, respondent No.3 Mr. Ashok Burpulle is present in Court consequent upon the order passed on 10.01.2017. Learned Senior Counsel for the MCGM submits on instructions that the petitioners is tenant of Ground Floor shop Nos.1 and 2. The Corporation officers had removed the hanging extension of the upper portion of the shops which the officers found to be inconvenient and would be dangerous to the passersby and the persons residing on the lower floor. The counsel further submitted that the Civil Court's order would be obeyed in its letter and spirit.
2. Both the learned counsel appearing for the parties refer to various photographs in support of their contentions.

3. We may observe that the petitioner would be entitled to file appropriate proceedings in the Trial Court, in case the petitioner still insist or of the view that the Trial Court's order was flouted by the respondent.

4. Learned counsel appearing for the petitioner submits that in the process of demolition of the upper floor portion by the respondent-Corporation officers, the petitioner's shutter of the shop got damaged, which is not in workable condition. Now the petitioner is unable to use the shutter. He is forced to remove the goods. Learned counsel submits that in the meanwhile the petitioner shall be permitted to make the shutter in operational condition without prejudice to the rights and contentions of the contesting parties. We observe, in case, that the petitioner desires to repair the shutter, he may make necessary repairs for getting the shutter in operational condition. The petitioner would not be entitled to claim any equity on that ground.

5. We direct the Trial Court to deal with such applications or proceedings, in case initiated by the petitioner on priority. It is clarified that we have not expressed opinion on the allegations made by the petitioner.

6. With these directions and observations, we dispose of the petition.

[M. S. KARNIK, J.]

[NARESH H. PATIL, J.]