

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

REVIEW PETITION NO. 2 OF 2017

IN

APPEAL FROM ORDER (ST.) NO. 31037 OF 2016

**Mrs. Mohini Vijay Kalantri
Through her constituted POA holder
Mr. Mahendra Laxminarayan Kalantri ...Petitioner**

Versus

**1 The Municipal Corporation of
Greater Bombay & Anr.**

2 Mrs. Sarina Esmeralda Lopez ...Respondents

Mr. S.R. Nargolkar, a/w Mr. L.I. Coupinho, i/b Deepak Pandey,
for the Petitioner.

Mr. N.V. Walawalkar, Senior Counsel, for the Respondent No. 1
(Corporation).

Respondent No. 2-party in person is absent.

**CORAM : G.S. KULKARNI, J.
DATE : 24 April 2017**

ORDER :

1. Heard Mr. Nargolkar along with Mr. L.I. Coupinho for the petitioner, Mr. Walawalkar, the learned Senior Counsel for respondent No. 1-Corporation. Respondent No. 2, who appears in person, is not present, though in the cause list, the names of the parties are appropriately set out also indicating the name of Respondent No. 2.

2. This Review Petition has been preferred by the original appellant seeking review of the order dated 5 December 2016 passed by this Court. The Appeal from Order was disposed of, as the appellant intended to make an application to the respondent No. 1-Corporation seeking regularization of Garage No. 2 in question. This Court, in view of the observations as made in paragraphs 2 and 3 of the said order, permitted the appellant to make an application to the respondent No. 1-Corporation to submit a regularization application/proposal within a period of two weeks from the said order (i.e. on or before 19 December 2016) with a further direction that the

Competent Authority namely the Executive Engineer (Building Proposal Department), Western Suburb, H Ward shall consider and decide the said application/proposal of the petitioner within a period of four weeks from the submission of the application/proposal.

3. As pointed out in paragraph 7 of the review petition, the petitioner states to have presented the application on 19 December 2016 through her architect M/s. Arch Space Planning & Designing Pvt.Ltd. and paid the requisite scrutiny fees of Rs. 1,000/- as demanded by the respondent No. 1-Corporation on 22 December 2016. It would be appropriate to note that the averments as made in paragraph 7 of the review petition which reads thus :-

“7. The Petitioner states that as per the directions of the Hon'ble High Court in Appeal from Order Stamp No. 31037 of 2016, the Petitioner filed the fresh regularization proposal for garage No. 2, before the Respondent No. 3 office on 19/12/2016 (i.e. within two weeks from the order dated 05/12/2012), through her architect M/s. Arch Space Planning & Designing Pvt. Ltd. and paid the requisite scrutiny

fees of Rs 1000/- as demanded by MCGM on 22.12.2016. Hereto annexed and marked Exhibits "E Colly" is the copy of fresh regularization proposal dated 19/12/2016, for garage No. 2, filed on 19/12/2016, along with receipt dated 22/12/2016."

4. In paragraph 8 of the review petition, the petitioner has averred that however on 22 December 2016, the respondent No. 1-Corporation has undertaken demolition of garage No. 2.

5. On the above background, the contention of the Petitioner is that as the petitioner was ready and willing to make an application/proposal for regularization, the 'Appeal from Order' was disposed of as also the L.C. Suit No. 2336 of 2014 was permitted to be withdrawn and disposed of, as observed in the order dated 5 December 2016. The submission is that, as now the suit premises, namely garage No. 2 is demolished, the regularization application is rendered inconsequential. It is submitted that on the other hand, the suit in question also being permitted to be withdrawn, the petitioner is left remediless. It is submitted that the withdrawal of the suit would thus cause a

serious prejudice to the petitioner.

6. Mr. Nargolkar the learned Counsel for the petitioner would submit that a situation has emerged that neither the petitioner could take a benefit of proposal of regularization as intended to be made by the petitioner nor after the demolition of the garage No. 2, the petitioner can pursue the suit in question in view of the suit being permitted to be withdrawn in view of the proposed regularization application of the petitioner. It is therefore, submitted that the order dated 5 December 2016 is required to be reviewed to the extent it had permitted the petitioner to withdraw the suit. It is submitted that if the order qua the withdrawal of the suit, if permitted to operate, it would cause a patent and irreparable injustice to the petitioner.

7. Mr. Walawalkar, the learned Senior Counsel for the respondent No.1-Corporation has justified the action taken on behalf of the Corporation as also he has vehemently opposed the review petition and the reliefs as prayed by the petitioner.

8. Having considered the submissions as made on behalf of the parties and having perused the order dated 5 December 2016 against which review is sought by the petitioner, to my mind, it is clear that for the reasons as recorded in the order, the petitioner was permitted to move an application/proposal for regularization which was required to be submitted within two weeks from the date of the said order as observed in paragraph 3 of the said order. A decision on the said proposal was required to be taken within the period of four weeks by the respondent No. 1-Corporation. In paragraph 5 of the order, it was directed that the respondent No. 1-Corporation shall not take any coercive action till communication of the decision on the regularization application/proposal. In view of this arrangement, the appeal from order was disposed of, as also the petitioner was permitted to withdraw the L.C. Suit No. 2336 of 2014 which was pending before the City Civil Court, Bombay.

9. However, as noted above, the suit premises garage No. 2 was demolished by the Municipal Corporation on 22

December 2016. In view of the demolition of the garage in question, the learned Counsel for the petitioner would be correct in contending that the petitioner would be rendered remediless, if the said L.C. Suit No. 2336 of 2014 which was filed before the City Civil Court ascertaining legality of the garage in question is not restored and/or withdrawal is not set aside. Considering these peculiar facts, it can very well be observed that there cannot be a situation that the petitioner is left in a position that she cannot pursue her rights as originally asserted by her in the suit in question. The rights of the parties were not decided by the order dated 5 December 2016. I am therefore, satisfied that if this limited contention of the petitioner is not accepted, it would apparently have a baneful effect on the rights of the petitioner to pursue the suit. It is therefore, in the interest of justice that the order dated 5 December 2016 to the extent as submitted on behalf of the petitioner is reviewed and modified. The review petition is accordingly partly allowed in the following terms :-

- (i) Order dated 5 December 2016 is modified to the extent that the observations in paragraph 7 pertaining to the withdrawal of L.C. Suit No. 2336 of 2014 pending before the City Civil Court at Bombay are set aside.
- (ii) L.C. Suit No. 2336 of 2014 filed in the City Civil Court at Bombay is restored and be heard and decided finally on its own merits.
- (iii) Review petition is partly allowed in the above terms.
- (iv) No costs.

[G.S. KULKARNI, J.]