

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

WRIT PETITION NO. 1006 OF 2017

Vishnu Shreyas Co-operative Housing
Society Ltd.

... Petitioner

V/s.

The Navi Mumbai Municipal Corporation & Anr.

... Respondents

Mr. Mahesh Vishwakarma i/b Vishwakarma and Associates for the Petitioner.

Mr. Sandeep More for the Respondent No.1.

Ms. Kalyani Tulankar for the Respondent No.2.

CORAM : A.S.OKA &

SMT. VIBHA KANKANWADI, JJ.

DATE : 04th AUGUST, 2017

P.C.:

. Heard the learned Counsel appearing for the Petitioner, the learned Counsel appearing for the first Respondent and the learned Counsel appearing for the second Respondent.

2 As far as the prayer (a) is concerned, Shri. Ketan R. Patel, the Chairman of the Petitioner has filed an undertaking on behalf of the Petitioner. Today the learned Counsel appearing for the Petitioner tendered across the bar a photocopy of the Resolution dated 10th July 2017 passed by the Petitioner authorising Shri. Ketan R. Patel to sign the various documents on behalf of the Petitioner. The same is taken on record and marked 'R1' for identification. The application made by the Petitioner for regularization on 03rd July 2017 is still pending.

3 By accepting the undertaking, the structure subject matter of notice dated 19th December 2016 will have to be protected till the disposal of the regularization application and for a reasonable time thereafter. The learned Counsel appearing for the Petitioner states that in view of the application for the amendment made in the suit and the subject matter of the suit (Regular Civil Suit No. 207 of 2016), he is not pressing the prayer clause (c). He states that he may seek appropriate relief in respect of prayer clause (d) by seeking amendment of the plaint. He states that he is not pressing prayer clauses (e) and (f). We accept the aforesaid statement.

4 Accordingly, we dispose of the petition by passing the following order.

ORDER

i) As regards prayer clauses (c) and (d), it will be open for the Petitioner to seek an appropriate relief in the pending suit by making an application for amendment. If such application is made, the learned Trial Judge will decide the same in accordance with law;

ii) The learned Counsel appearing for the Petitioner on instruction states that the Petitioner desires to implead the second Respondent as a party Defendant to the pending suit. We direct that on application being made by the Petitioner, the learned Trial Judge will permit the Petitioner to implead the second Respondent as a party Defendant in the pending suit;

iii) We accept the undertaking dated 12th July 2017 of Mr. Ketan R. Patel as an undertaking of the Petitioner-Society;

iv) We direct the first Respondent Municipal Corporation to decide the

application dated 03rd July 2017 for regularization as expeditiously as possible and in any event, within a period of 60 days from 03rd July 2017;

v) The order passed on regulation application shall be communicated to the Petitioner. Till the date of communication of the order, no action shall be taken on the basis of impugned notice dated 19th December 2016. If the order be adverse to the Petitioner, the said protection shall continue to operate for a period of one month from the date on which the order is served on the Petitioner;

vi) We make it clear that we have made no adjudication on merits on the application for regularization and all contentions in that behalf on merit are kept open;

vii) Writ Petition is disposed of on the above terms.

(SMT. VIBHA KANKANWADI, J.)

(A.S.OKA, J.)