

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

WRIT PETITION NO. 3606 OF 2017

Shri. Anwar Salamat Momin

... Petitioner

V/s.

**Municipal Corporation for the city of
Bhiwandi Nizampur & Ors.**

... Respondents

Mr. Sachin Dhakephalkar for the Petitioner

Ms. Manisha Salekar i/b Mr. N.R. Buban for the Respondent Nos. 1 to 3.

Mr. V.K. Bodhare for the Respondent No.4.

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 to third Respondents and the learned Counsel appearing for the fourth Respondent.

2 There is an affidavit-in-reply filed by the fourth Respondent in which it is disclosed that after notice dated 24th July 2017 was served to the fourth Respondent, she has made an application for regularization dated 28th July 2017. A copy of the application for regularization is annexed to the affidavit-in-reply (Exh.'R6').

3 The fourth Respondent in her affidavit has relied upon the Development Permission dated 20th October 1993 granted to her by erstwhile Bhiwandi

Nizampur Municipal Council. The said permission is in respect of the ground floor plus first floor. The dimensions of the structure have been mentioned as 9.25 meters X 2.75 meters. The Exhibit R2 is the Occupation Certificate granted to the fourth Respondent on 10th June 1994 in respect of the ground plus one floor having outer dimension of 2.75 meters X 9.25 meters. The application for the regularization made by the fourth Respondent discloses that an application was made by her on 02nd May 2005 for constructing ground plus three floors on the same property. In the application for regularization, it is mentioned that though she had instructed to the Architect to apply for permission, he did not apply for permission. It is contended that she has been paying taxes in respect of additional construction carried out by her. Exhibit R4 is the Assessment Notice issued by the Municipal Corporation, which shows that now the structure consists of stilt plus three floors. The said documents produced by the fourth Respondent show that now altogether a new construction has been made by the fourth Respondent in respect of she has applied for the regularization.

4 As the fourth Respondent has accepted that the entire structure is illegal and she has applied for regularization, now there is no need to follow due process of law. Accordingly, we dispose of the petition by passing the following order.

ORDER

i) We direct the first Respondent to decide the application dated 28th July 2017 made by the fourth Respondent within a period of 60 days from 28th July 2017. The order passed on the said application be communicated to the fourth Respondent as well as to the Petitioner;

ii) Till the date of communication of the order to the fourth Respondent, an

action of demolition in respect of the subject structure shall not be carried out;

iii) Till the date of communication of the order passed on the regularization application, an action of demolition shall not be taken by the Municipal Corporation. If the application for regularization is rejected, the Municipal Corporation shall not take action of demolition for a period of one month from the date on which the order is communicated to the fourth Respondent;

iv) On expiry of a period of one month as aforesaid, it will be open for the first Respondent to take action of demolition without issuing any further notice to the fourth Respondent;

v) We restrain the fourth Respondent from creating third party rights in respect of the structure or any part of the structure and from parting with possession of the premises therein without prior permission of this Court;

vi) Writ Petition is disposed of on above terms;

vii) All concerned to act on an authenticated copy of this order.

(SMT. VIBHA KANKANWADI, J.)

(A.S.OKA, J.)