

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3856 OF 2015**

Abdul Wahid Mohd. Yaqub Ansari

..Petitioner.

Vs

Bhiwandi Nizampur City
Municipal Corporation ... and
Anr.

.. Respondents

Mr.R.D.Suryawanshi, Advocate for Petitioner.

Mr. N.R.Bubna , Advocate for Respondent no.1-Corporation.

Mr. Girish G. Togani, Advocate for Respondent no.2.

**CORAM : R.G.KETKAR,J.
DATE : 03/03/2017**

PC:

1. Heard Mr.R.D.Suryawanshi, learned counsel for the petitioner, Mr. N.R. Bubna, learned counsel for respondent no.1 and Mr.Girish Togani, learned counsel for the respondent no.2 at length.

2. This petition takes to the Judgment and order dated 25.3.2014 passed by the learned 4th Jt. Civil Judge, Junior Division, Bhiwandi below Exhibit 5 in Regular Civil Suit No.371 of 2009 as also the Judgment and order dated 22.8.2014 passed by the learned Adhoc District Judge-3, Thane in Misc. Civil Appeal No.55 of 2014. By these orders, the Courts below rejected the application filed by the plaintiff for grant of injunction restraining the defendant corporation from demolishing the suit cabin from varandah of Star Hotel at Dhamankar Naka, Bhiwandi without

following due process of law.

3. Mr. Suryawanshi states that on the last date of hearing the petitioner was present and today Mr. Abdul Samad Ansari, son of the petitioner, is present in the Court. He has tendered photocopy of his driving licence which is taken on record and marked "X" for identification. Mr. Suryawanshi states that the petitioner has instituted Regular Civil Suit No. 371 of 2009 and Regular Civil Suit No. 326 of 2014 against respondent no.1- Corporation. In Regular Civil Suit No. 371 of 2009, respondent no.2 filed application under Order I, Rule 10(2) of C.P.C which was allowed. Respondent no.2 is impleaded as defendant.

4. Upon taking instructions from the petitioner as also son of the petitioner, Mr. Suryawanshi seeks permission to withdraw the Petition. He further states that he will withdraw Regular Civil Suits No. 371 of 2009 and 326 of 2014 pending in the trial Court within two weeks from today by producing authenticated copy of this order before the trial Court. He states that within six weeks from today, the petitioner will file proposal for regularization as per Section 44(1) of the Maharashtra Regional and Town Planning Act, 1966 read with Development Control Regulations applicable to the first respondent. Mr. Bubna states that upon receipt of proposal for regularization from the petitioner, respondent no. 1 will send copy thereof to respondent no.2 within two weeks.

5. Mr. Togani assures that after receipt of proposal for

regularization from respondent no.1-Corporation, respondent no.2 will submit objections and suggestions within two weeks from receipt of the proposal.

6. Mr.Bubna states that the Corporation will take decision on the proposal for regularization after considering the objections and suggestions received from respondent no.2, if any, and in accordance with law within four weeks from receipt of objections and suggestions from the second respondent. In case objections and suggestions are not received from the second respondent, the Corporation will take decision on the proposal for regularization within four weeks from receipt of the proposal.

7. In view thereof, Petition is allowed to be withdrawn and is disposed of as withdrawn in the following terms.

(i) The petitioner shall file application for withdrawal of Regular Civil Suits No. 371 of 2009 and 326 of 2014 pending in the trial Court within two weeks from today by producing authenticated copy of this order. If such application is filed, the learned trial Judge shall pass order permitting the petitioner to withdraw the suits.

(ii) The petitioner shall file proposal for regularization as per Section 44(1) of the Maharashtra Regional and Town Planning Act,1966 read with Development Control Regulations applicable to the first respondent within six weeks from today.

(iii) Upon receipt of the proposal from the petitioner,

respondent no.1 shall send copy thereof to the 2nd respondent within two weeks inviting objections/suggestions of the second respondent. Respondent no.2 shall submit objections/suggestions within two weeks from receipt of the proposal.

(iv) Respondent no.1 shall take decision on the proposal for regularization after considering the objections and suggestions received from respondent no.2, if any, and in accordance with law within four weeks from receipts of objections and suggestions from the 2nd respondent. It is made clear that respondent no.1 shall not give hearing either to the petitioner or respondent no.2. In case objections and suggestions are not received from the 2nd respondent within the stipulated period, the Corporation will take decision on the proposal for regularization within four weeks thereafter and in accordance with law.

(v) Both the parties shall maintain status quo for a period of 12 weeks from today.

(vi) This order will not preclude the learned District Judge from proceeding with Appeal No.151 of 2012 arising out of Judgment and decree passed in Regular Civil Suit No. 115 of 2009. Order accordingly.

(R.G.KETKAR, J.)