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

WRIT PETITION NO. 10804 OF 2014

M/s. B.D. Jogani & Company

...Petitioner

Vs.

The Municipal Corporation of Greater
Mumbai & Anr.

...Respondents

Mr. Vineet Naik, Senior Counsel a/w. Ms. Kausar Banatwala
i/b. Mr. Tushar Goradia for Petitioner

Mr. Pradeep M. Patil for Respondent No.1 BMC

Mr. Pravin Samdani a/w. Mr. Vishal Kanade, Ms. Bindi Dave,
Ms. Nikita Bhansali i/b. Wadia Ghandy & Co., for Respondent No.2

CORAM : M.S. KARNIK, J.

DATED : 23RD JANUARY, 2017

P.C. :

The challenge in this Petition is to an order dated 22nd November, 2014 passed by the Assistant Engineer (B & F) D-Ward (Designated Officer– I/II) (hereinafter referred to as the Designated Officer for short) thereby directing the petitioner to remove / demolish / pull down / reinstate the notice work within seven days from the receipt of the order, failing which the unauthorised work will be demolished departmentally at the risk of the petitioner as to the cost and consequences thereof.

2. The facts in a nutshell are as under:

Upon receipt of various complaints regarding illegal permanent staircase to the access drive-way road of Respondent No.2 and construction of large entrance to the illegal staircase on access drive way road, illegally breaking of the main building wall on the ground floor and construction of two glass windows, the respondent no.1 Corporation issued a notice dated 11th October, 2013 under Section 351 of the Mumbai Municipal Corporation Act (hereinafter referred as MMC Act for short) to the petitioners. According to the Corporation the violations are in breach of the approved building plans and without any sanction. By the said notice the petitioners were called upon to show sufficient cause why the said structure should not be pulled down. The hearing was fixed on 10th May, 2014.

It is the Petitioner's case that the Designated Officer Shri Uday M. Mahajan gave hearing to the Petitioner on 10th May, 2014. According to the Petitioner the impugned order, however came to

be passed by another Designated Officer Shri Suresh L. Kanoja on 22nd November, 2014 almost after a period of five months from the date when the matter was last heard.

3. The principle challenge of the Petitioner apart from the merits is that :

(a) Though the hearing took place before the Designated Officer Shri Mahajan, consequent to the promotion of Shri Mahajan the order was passed by another Designated Officer Shri Kanoja. According to the Petitioner, therefore, hearing was given by one Officer and the impugned order is passed by another Officer and hence, the order is vitiated.

(b) Though the last hearing took place on 10th May, 2014 the impugned order is passed only on 22nd November, 2014 that too after a delay of five months and therefore, this is a case of inordinate delay between the conclusion of hearing and the order passed by the Designated Officer. In the submission of the learned

Senior Counsel for the Petitioner the order passed by the Designated Officer is not a reasoned order. He further submits that now he is in possession of some documents which the Petitioner wants to rely upon to show that the alterations / modifications are not illegal and therefore, seeks one more opportunity to present his case before the Designated Officer in the light of these documents.

4. The learned Counsel for the Corporation has admitted that the hearing took place on 10th May, 2014 by the then Designated Officer Shri Mahajan, however, as Shri Mahajan was promoted and the new Designated Officer Shri Kanoja took charge only on 5th September, 2014, the impugned order came to be passed in these circumstances on 22nd November, 2014.

5. Learned Counsel for the Corporation submits that the noticed alterations / violations are not in accordance with the sanctioned plans, therefore, the impugned order calls for no interference. In

any case the entire material was before the Designated Officer Shri Kanoja and in these circumstances having regard to the provisions of Section 351 the course adopted by the Corporation is not contrary to law.

6. The learned Senior Counsel for the Respondent No.2 has invited my attention to the violations / alternations and pointed out that the nature of the original structure is completely changed. According to the learned Senior Counsel the alleged alternations and violations are completely contrary to the sanctioned plans which aspect is correctly considered by the Designated Officer and hence the impugned order does not call for any interference. The learned Senior Counsel for the Respondent No.2 submits that the interference in the impugned order is not warranted only because some other Designated Officer has passed the order as this is a case of institutional hearing. According to the learned Senior Counsel the Petitioner has failed to produce any sanctioned plan or permission to demonstrate that the alterations are legal and sanctioned.

7. Reliance is placed on the decision of the Apex Court in the case of **Kalinga Mining Corporation Vs. Union of India and others (2013) 5 SCC, 252** and also the decision of the Division Bench of this Court in **Writ Petition No. 333 of 2014 in the case of Meridian Enterprises Pvt. Ltd. & Anr. Vs. Union of India & Anr. 2015 SCC Online Bom. 3978.**

8. Having considered the submissions advanced by the learned Senior Counsels on behalf of the petitioner and the Respondent No.2 and that of the learned Counsel on behalf of the Respondent No.1 I am of the opinion that the matter needs to be reconsidered by the Designated Officer. Admittedly the Petitioner was heard by Shri Mahajan, the then Designated Officer and the order was passed by another Designated Officer and that too almost after five months from the date when the hearing took place. In view of this undisputed fact I do not find it necessary to go into the merits of the matter. In the fact situation of the present case when the Petitioner has made a detailed representation in support of his case and raised various contentions, it is necessary that the same ought to be dealt with by the Authority who hears the matter.

9. Hence, the following order:

1. The impugned order is quashed and set aside.
2. The Designated Officer is directed to hear the matter afresh on its own merits and after hearing the Petitioner and the Respondent No.2, the Designated Officer may decide the same in accordance with law within a period of twelve weeks from 2nd February, 2017.
3. The Petitioner as well as the Respondent No.2 may submit such further documents and materials in support of their respective claims.
4. I may not be understood to have expressed any opinion on the merits of the matter and the Designated Officer is requested to decide the matter on its own

merits and in accordance with law. The Petitioner and Respondent No.2 to appear before the Designated Officer on 2nd February, 2017 alongwith the authenticated copy of this order at 11.a.m.

5. Writ Petition is accordingly disposed of on the above terms.

(M.S. KARNIK, J.)