

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

WRIT PETITION NO. 13953 OF 2016

Mrs. Seema Deep Narayan ... Petitioner

V/s.

The State of Maharashtra & anr. ... Respondents

Mr. H.P. Vyas for the petitioner.

Ms. R.A. Salunkhe, AGP for respondent no.1.

Mr. N.P. Deshpande for respondent no.2.

**CORAM : NARESH H. PATIL AND
M.S. KARNIK, JJ.**

8th February, 2017.

P.C.

The petitioner challenges the communication/order issued by respondent no.2 dated 5th December, 2016.

2. By an order dated 27th September, 2016, the Division Bench of this Court (Coram: Ranjit More & Smt. Anuja Prabhudessai, JJ) in Writ Petition No. 10388/2016 disposed of the petition. The relevant portion of the order reads as under:

“(a) The Petitioner is at liberty to file regularisation application through licensed Architect with Respondent No.2 Corporation for regularisation of the subject structure within a period of four weeks from today.

(b) In the event such application for regularisation is filed, the competent authority of Respondent No.2 shall decide the same within a period of eight weeks from the date of filing of such application thereof.

(c) During the pendency and till the disposal of the said representation both the parties shall maintain status quo regarding the subject structure and in the event the decision adverse to the interest of the Petitioner, same shall not be implemented for a period of two weeks from the date of communication of the same to the Petitioner.”

3. Consequent to the said order the Chief Executive Officer of Development Corporation communicated the petitioner that petitioner had encroached upon the land possessed by the Corporation. The petitioner runs a petrol pump. The authority directed the petitioner to remove the construction made on the encroached portion. Learned Counsel appearing for petitioner submits that petitioner was not heard personally by the concerned authority. It is further submitted that no construction could be carried out close to the petrol pump according to the provisions

of the Explosives Act, 1884.

4. The authorities concerned had gone through the record and had passed order directing the petitioner to vacate the encroached piece of plot occupied by the petitioner without authority of law. In the facts and from the documents placed on record, we do not find that the Chief Executive Officer committed error in passing such order. We do not notice any ambiguity in the impugned order. We have also taken into consideration the order passed by the Division Bench of this Court on 24th January, 2017 (Coram: A.S. Oka and Smt. Anuja Prabhudessai, JJ) which reads as under:-

“ Heard learned Counsel appearing for the Petitioner and the learned counsel appearing for Respondent No.2.

As the Regular Bench presided over by Shri Justice N.H. Patil is not available, papers are produced before this Bench. Perused the impugned order. When the Petitioner has admittedly encroached upon the land vesting in the second Respondent which is the Planning Authority, we find no error in the view taken in the impugned order. As the Petitioner is running a Petrol Pump under the dealership of Hindustan Petroleum Corporation Limited, the only order which can be passed is of the Petitioner removing

encroachment within a reasonable time.

The learned counsel appearing for the Petitioner states that the petitioner is not present in Court today. To enable the learned counsel appearing for the Petitioner to take instructions, we direct that the ad-interim relief granted on 19th December, 2016 is extended by a period of two weeks from today.”

5. In the facts, we find that no further interference is warranted. Learned Counsel submits that the reasonable time be provided so that the petitioner can take necessary steps to remove the encroached, constructed portion. During the course of hearing, it was submitted that petitioner runs petrol pump on the land allotted by the Corporation but has further encroached upon the Corporation land by extending the activities. That portion which the petitioner has encroached upon has been directed to be handed over to the Corporation.

6. We do not find any error in the view adopted by the Corporation. We grant four months time to the petitioner to clear the encroached portion. In case petitioner fails to remove encroachment within four months, the Corporation is entitled to take appropriate action.

7. With aforesaid observations and directions, writ petition stands disposed of.

(M.S. KARNIK, J.)

L.S. Panjwani, P.S.

(NARESH H. PATIL, J.)