

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 217 OF 2016

Shri Prasad Bhattacharya .. Petitioner
Vs.
The Municipal Corporation of
Gr. Mumbai and ors. .. Respondents

Mr. Prasad Bhattacharya, Petitioner-in-person.
Ms.Kejal Mastakar, for MCGM.
Ms.J.P. Thakkar, for Respondents No. 7 to 9.

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

06th MARCH, 2017

P.C. :

. The petitioner who appears in-person has brought to our notice order dated 24/12/2014 passed by the learned Single Judge of this Court (Coram: Mrs.Mridula Bhatkar, J.) in Appeal From Order (st.) No. 27953 of 2014 and other relevant documents and affidavits. The petitioner - party-in-person submits that he is residing in the subject building since childhood. This statement is disputed by learned Counsel appearing for respondents No. 7 to 9. He submits that

respondents No.7 to 9 had illegally constructed portion which is horizontal extension to the existing building on the ground floor. The petitioner party-in-person has also raised issue concerning change of user from residential to commercial.

2. Learned Counsel for respondent – Corporation has filed affidavit-in-reply. On instructions, she submits that horizontal extension has been removed and change of user from residential to commercial was permitted by the Corporation. There is dispute on this issue as petitioner- party-in-person submits that change of user was never permitted. Reference is made to the observations made by the learned Single Judge of this Court. Learned Counsel for respondent - Corporation placed relevant and other documents of the Corporation to show that change of user was permitted.

3. The petitioner - party-in-person submits that representations were made to various authorities of the Corporation. By communication dated 08/07/2016, the

Assistant Commissioner replied to the petitioner which is annexed at Exh. R-4 to the affidavit-in-rejoinder of the petitioner.

4. Disputed questions are raised before this Court in respect of existing subject structure & change of user of the subject structure. The issue has been examined in the Civil Court. Respondents No. 7 to 9 had filed Civil Application against the order passed by the learned Single Judge (Coram: Mrs.Mridula Bhatkar, J.) which was dismissed as withdrawn.

5. Learned Counsel appearing for the Corporation submits that now notice under Section 353(B) of the MMC Act has been issued to respondent No.6 and the Corporation will take necessary steps in accordance with law.

6. In view of the question of facts raised before this Court in respect of change of user, past record of 1983 and order passed by the Civil Court, we are not inclined to exercise our

extraordinary writ jurisdiction.

7. Affidavit dated 08/12/2016 filed by the Corporation is taken on record. In the facts, the Corporation to take necessary steps in accordance with law in respect of the record maintained by the Corporation and allegation of the manipulation of the said record. The concerned authority of the Corporation shall look into the matter and deal with the same.

8. In view of the above observations, we do not find that the Petition needs to be entertained any further. Petition is accordingly rejected.

(M.S.KARNIK, J.)

(NARESH H. PATIL, J.)