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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.663 OF 2015

Khairunnisa Hamid Khan & Ors. ...Petitioners
vs.
Municipal Corporation of Greater
Mumbai and others ...Respondents

Mr.N.V.Khaladkar for the Petitioners
Ms Geeta Joglekar for the respondent Nos.1 to 3.
Mr.P.B.Thakar for respondent No.4

CORAM : A.S.OKA, &
SMT.VIBHA KANKANWADI,JJ.
DATE : JUNE 29, 2017

P.C.:

1 Heard the learned counsel for the petitioner. The learned counsel for the respondent Nos.1 to 3 and the learned counsel for the respondent No.4. The grievance of the petitioner in this petition under Article 226 of the Constitution of India is that the respondent Nos.1 to 3 failed to take action of demolition in respect of the illegal structure erected by the respondent No.4. The petitioner is relying upon photographs at Exh.A.

2 The respondent No.1-Corporation issued a notice under section 351 of the Mumbai Municipal Corporation Act,1888 (for short 'the said Act') to the respondent No.4 calling upon him to show cause as to why the structure described in the said notice

should not be demolished. The respondent No.4 replied to the said notice and on 23rd September 2016, the designated Officer passed an order of demolition.

3 The respondent No.4 has filed a civil suit for challenging the action/order under section 351 of the said Act. The learned counsel for the respondent Nos.1 and 2 and the learned counsel for the respondent no.4 state that in the Notice of Motion taken out by the respondent No.4 in the said suit, ad-interim relief for protecting the structure has been granted and now after hearing the parties, the Notice of Motion is kept for passing orders on 12th July 2017.

4 Thus, the Municipal Corporation has initiated action of demolition in respect of the structure subject matter of this petition. So long as ad-interim relief granted by the City Civil Court is in force, obviously, the action of demolition cannot be taken by the respondent Nos.1 to 3. If the said order is vacated, the Municipal Corporation is bound to take immediate steps for demolition of the structure.

5 The learned counsel for the respondent No.4 has tendered an additional affidavit in which the respondent No.4 has disputed the title claimed by the petitioner.

6 In this petition we are not concerned with the

issue of title. Accordingly, we dispose of this petition by passing the following order:

- (I) As and when prohibitory order passed by the Trial Court preventing the Municipal Corporation from acting upon the order dated 23rd September 2016 passed under section 351 of the said Act is vacated, the respondent no.1 shall proceed to take action of demolition in terms of the order dated 23rd September 2017;
- (II) If the respondent No.1 fails to take action even after prohibitory order is vacated, the petitioner can always call upon the Municipal Commissioner to take appropriate action;
- (III) The dispute regarding title raised by the respondent No.4 is not adjudicated upon and all questions in that behalf are kept open.

(VIBHA KANKANWADI, J.)

(A.S.OKA, J.)