

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.835 OF 2013

Shaikh Mohammed Khalid	...Petitioner
Versus	
The Municipal Commissioner, MCGB & Ors.	...Respondents

Ms. Radhika Samant i/b. Mr. P.M. Havnur for the Petitioner.
Ms. Geeta Joglekar for the Respondent Nos.1 to 3.
Mr. S.G. Kudle for the Respondent Nos.4 and 5.
Mr. Amit Shastri, AGP for the Respondent No.6.

**CORAM : A.S. OKA &
SMT. VIBHA KANKANWADI, J.J.**

DATE : 30th JUNE, 2017

P.C.

1. Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the respondent nos.1 to 3, the learned counsel appearing for the respondent nos.4 and 5 and the learned AGP for the respondent no.6.

2. The case in short in this petition under Article 226 of the Constitution of India is that the 4th and 5th respondents have carried out illegal construction without obtaining permission of the competent authority. By order dated 30th November 2015, this Court directed the designated officer to visit the site in question and to ascertain whether any illegal construction has been carried out by 4th and 5th respondents. The designated officer was directed

to give notice of the visit to the 4th and 5th respondents and a liberty was granted to the said respondents to produce copies of the permission, if any, granted by the 1st respondent/Municipal Commissioner under the provisions of the Maharashtra Regional and Town Planning Act, 1966. Preliminary objection regarding the locus of the petitioner raised by the 4th and 5th respondents was kept open.

3. After carrying out inspection as per the directions given by this Court on 30th November 2015, the designated officer-I of H/East Ward submitted a report dated 22nd February 2016 recording that unauthorized construction was found by him which is shown in the hand sketch drawn by him, which is annexed to the report. A copy of the sanctioned plan is also annexed to the said report.

4. The learned counsel appearing for the 4th and 5th respondents states that the said respondents will apply for regularization of the work found to be illegal by the designated officer-I as stated in his affidavit and report within a period of three months from today. He states that the said respondents want to rely upon the policy of the State Government as reflected in the Government Resolution dated 5th May 2011 as well as the other policies.

5. In view of the aforesaid statement of the 4th and 5th respondents, this petition need not be kept pending and the same is disposed of as under:-

ORDER

- (i) It will be open for the 4th and 5th respondents to make an application for regularization of the offending work/structure in the prescribed form through a licensed Architect to an appropriate authority of the Municipal Corporation within a period of three months from today;
- (ii) The Municipal Corporation shall take appropriate decision on the said application within a maximum period of 60 days from the date on which application for regularization is made;
- (iii) The order passed on the application for regularization shall be communicated to the 4th and 5th respondents or their licensed Architect;
- (iv) Till the date of communication of the said order to the 4th and 5th respondents or their licensed Architect, whichever is earlier, action of demolition shall not be taken by the 1st respondent/Municipal Commissioner. If the order be adverse to the 4th and 5th respondents, the said protection will continue to operate for a period of four weeks from the date on which the order is communicated to the 4th and 5th respondents or their licenced Architect, whichever is earlier;
- (v) On the failure of the 4th and 5th respondents to apply for regularization within a period of three months from today, it will be open for the Municipal Corporation to initiate appropriate action, in accordance with law;
- (vi) We make it clear that we have made no adjudication on the merits of the application for regularization as well as on the issue of locus of the petitioner;

(vii) The petition is disposed of in the above terms.

(viii) The parties shall act upon an authenticated copy of this order.

(SMT. VIBHA KANKANWADI, J.)

(A.S. OKA, J.)