

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

WRIT PETITION NO. 2210 OF 2014

Manilal Talakshi Nagda

... Petitioner

V/s.

Municipal Corporation for Greater Mumbai & Ors. ... Respondents

Mr. Jitendra Shukla for the Petitioner.

Ms. Vandana Mahadik for the Respondent No.1.

Mr. M.A. Sayed, AGP for the Respondent No.2.

CORAM : A.S.OKA &

SMT. VIBHA KANKANWADI, JJ.

DATE : 22nd JUNE, 2017

P.C.:

. A notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act”) was served to the Petitioner in respect of the structure subject matter of this petition. The Petitioner challenged the notice by filing a suit in the City Civil Court. The suit was dismissed. Being aggrieved by the decree of dismissal of the suit, the present Petitioner filed First Appeal No. 1281 of 2012. By order dated 16th October, 2012, the Appeal was disposed of as not pressed. Liberty was granted to the Petitioner to apply for regularisation of the suit structure. The structure was protected till the disposal of the application for regularisation. By communication dated 13th January 2013, the Architect of the Petitioner was informed by the Executive Engineer, Building Proposal that the request for the regularisation cannot be accepted. An Appeal preferred by the Petitioner against the said order is pending before the State Government.

2 The submission by the learned Counsel appearing for the Petitioner is that the order dated 13th January 2013 is not passed on merits. The order dated 16th October 2012 passed in the First Appeal protects the Petitioner and therefore, the structure could not have been demolished. The structure has been demolished during the pendency of this petition.

3 As stated earlier, the suit challenging the notice under Section 351 of the said Act in respect of the suit structure was dismissed. The First Appeal preferred for challenging the decree of dismissal of the suit was not pressed. However, the liberty was granted to the Petitioner to apply for the regularisation. Thus, the Petitioner has accepted that the suit structure is completely illegal. Surprisingly, the Petitioner applied for the review of the order dated 16th October 2012 passed in the First Appeal. By order dated 18th February 2014, the said application has been dismissed with costs quantified at Rs.25,000/-. The order dated 13th January 2013 gives reasons for rejection of the proposal for the regularisation. The reasons may not be to the satisfaction of the petitioner, but by no stretch of imagination, it can be said that the application for regularisation has not been considered on merits.

4 By way of amendment, the Petitioner has incorporated prayers directing the Mumbai Municipal Corporation to reconstruct the structure or in the alternative, permitting the Petitioner to reconstruct the structure. A prayer is also made for grant of compensation on account of illegal demolition of the structure.

5 As stated earlier, the Petitioner has accepted that the structure which was demolished was unauthorisedly constructed. Therefore, none of the prayers which are made in the petition can be granted.

6 As the structure has been demolished on the basis of an action taken under Section 351 of the said Act, now there is no question of regularisation of the said structure which does not exist.

7 Hence, there is no merit in the petition and the same is rejected.

(SMT. VIBHA KANKANWADI, J.)

(A.S.OKA, J.)