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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2002 OF 2014**

Chitralekha Rath	... Petitioner
Vs.	
The Municipal Corporation of Greater Bombay and Ors.	... Respondents

Mr. Kapil Moye a/w Mr. Chirag Shah i/by Jitendra J. Shah for the
Petitioner.

Ms. Vandana Mahadik for the Respondent - BMC.

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

DATE : 12th JULY, 2017

P.C.

1 Heard the learned counsel appearing for the petitioner and
the learned counsel appearing for the respondents. By this Petition
under Article 226 of the Constitution of India, the petitioner has taken
an exception to the notice dated 4th April, 2005 issued by the
respondents and the order passed on 23rd January, 2014 by the second
respondent on the basis of the said notice.

2 By the impugned order, the second respondent held that
the work mentioned in the impugned notice was illegal and therefore,
the petitioner has been directed to remove the unauthorised work.

3 Today, an affidavit is tendered by the learned counsel appearing for the petitioner. The said affidavit is of the petitioner who has affirmed it today. It is taken on record and marked 'X1' for identification. In the undertaking of the petitioner, it is stated that application for regularisation of the offending construction subject matter of the impugned notice and the impugned order has been filed on 6th July, 2017. Paragraphs 3 and 4 of the said undertaking read thus :-

“3. I hereby undertake to this Hon'ble Court that in case the Respondent Corporation rejects my Regularization Application, the illegal and unauthorized construction as stipulated in such order that may be passed will be removed by me within 45 days from the date of communication of the Rejection Order. I say that the time of 45 days is required as I am Senior Citizen residing alone in the said premises and not keeping good health.

4. I say that I will abide by the Undertaking given to this Hon'ble Court and I am made aware about the consequences, if I breach the Undertaking given to this Hon'ble Court.”

4 As the petitioner has applied for regularization, it follows that the petitioner has accepted that the structure subject matter of the

impugned notice and impugned order is unauthorized. As the petitioner has given an undertaking as aforesaid, limited protection deserves to be granted to the petitioner.

5 Hence, we dispose of the Petition by passing the following order :-

- (i) We accept the undertaking of the petitioner. In view of the undertaking, we direct the respondents to decide the application dated 6th July, 2017 as expeditiously as possible and in any case within a period of four months from today. We accept the request of the learned counsel appearing for the petitioner that longer time be granted to the Municipal Corporation to dispose of the application as obtaining of certain clearances will take time. The learned counsel appearing for the petitioner, on instructions, states that the petitioner will not take benefit of the Regulation in the Development Control Regulations regarding deeming fiction even if the application is not decided within the time prescribed by the Development Control Regulations. We accept the said statement;

- (ii) The order passed on the regularization application be communicated to the petitioner or to the petitioner's licensed architect;
- (iii) Till the date of communication of the order to the petitioner or to the petitioner's licensed architect or whichever is earlier, action on the basis of the impugned notice and impugned order shall not be taken;
- (iv) If the order be adverse to the petitioner, action of demolition shall not be taken for a period of 45 days from the date of communication of the rejection order to the petitioner or to the petitioner's architect, whichever is earlier;
- (v) The period of 45 days is granted to enable the petitioner to remove the illegal construction subject matter of the impugned notice and impugned order at her own cost;
- (vi) On the failure of the petitioner to remove the illegal construction within stipulated period of 45 days, it will be open for the Municipal Corporation to remove the

same without issuing any further notice to the petitioner;

(vii) We make it clear that we have made no adjudication on merits of the regularization application made by the petitioner and all contentions are kept open;

(viii) The Petition is disposed of on above terms.

(SMT. VIBHA KANKANWADI, J)

(A.S. OKA, J)