

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

WRIT PETITION NO. 1736 OF 2016

Mr. Juned Usman ... Petitioner.

Versus

Municipal Corporation for
Greater Mumbai and another ... Respondents.

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Mr. P.S. Dani Sr. Counsel i/b. Jagdish G. Aradwad (Reddy) for the
Petitioner.

Ms. Pallavi Thakar for Respondent-MCGM.

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**CORAM : Smt. Vasanti A Naik &
Riyaz I. Chagla, JJ.**

DATE : 5th October, 2017.

P.C.:

Rule. Rule made returnable forthwith. The Writ Petition is heard finally at the stage of admission with the consent of the learned Counsel for the parties.

By this Writ Petition, the petitioner seeks a direction against the respondent-MCGM to decide the application of the petitioner for grant of permission for repairing the structure of the petitioner, admeasuring 1692 sq. ft. in accordance with the circular of the Corporation dated 25.02.2004 and the directions of this Court, in the order dated 19.07.2010 in Writ Petition (L) No.1604/2010.

The petitioner claims to be the owner of the structure on D.P Road, Juhu Lane, Andheri (W). The Corporation required the part of the said structure for road widening. The petitioner surrendered 1933 sq. ft. of the structure, as a result of which, 1692 sq. ft. of the structure remained with the petitioner. The petitioner applied to the corporation for permission to repair the structure on the KURRAR pattern. The MMRDA certified that the petitioner is eligible for permission as per the KURRAR pattern. The petitioner then made an application to the respondent-Corporation on 28.06.2008 seeking permission to repair the structure. The said application was, however rejected by the Corporation by the order dated 08.07.2010 that was subjected to challenge in Writ Petition (L) No.1604/2010. On hearing the parties, this Court had by the order dated 19.07.2010 directed the respondent-Corporation to decide the application of the petitioner as expeditiously as possible and preferably within two months from receipt of the order. While so directing the Court observed that the respondent-Corporation could not have rejected the application of the petitioner merely because the petitioner could not produce the certificate from the Dy. Collector (Encroachment). Though the order impugned in the said petition, dated 08.07.2010 was set aside and the Corporation was directed to decide the application within two months, the Corporation did not decide the same. The petitioner again secured the certificate from the MMRDA that the petitioner was entitled to the permission for repair and reconstruction as per the KURRAR pattern. In the meanwhile, the Corporation also sought the legal opinion and the certificate from the MMRDA. The MMRDA again certified that the petitioner was eligible for permission for

reconstruction and repairs as per the KURRAR pattern and the legal opinion was also in favour of the petitioner. Despite the said position, the application of the petitioner was not decided till this Writ Petition was filed, much less favourably, hence this Petition.

The respondent-Corporation has filed the affidavit in reply on 12.09.2017. In the affidavit in reply, the Municipal Corporation has not recorded any reason for not deciding the application of the petitioner within the time frame. In paragraph 3 of the affidavit in reply, the Corporation appears to have again relied on the order dated 08.07.2010 by which the permission was refused and the reasons mentioned in the said order for refusal of the permission though the said order is set aside in Writ Petition (L) No.1604/2010.

It appears from the affidavit in reply filed on behalf of the Corporation, that the Corporation is not desirous of deciding the application of the petitioner in accordance with the directions in the order dated 19.07.2010 in Writ Petition (L) No.1604/2010 by considering the legal opinion as also the fact that the competent authority (encroachment) and the MMRDA has certified that the petitioner is eligible for permission for reconstruction and repairs of the premises as per the KURRAR pattern. It appears from the statements made by the Corporation in the affidavit in reply that the Corporation is looking at the matter with a closed mind. In the circumstances of the case, it would be necessary to direct the respondent-Corporation to decide the application of the petitioner in accordance with law within a time frame. We would like to

make it clear that if on this occasion the Corporation does not decide the application of the petitioner as per our directions in the previous Petition and in accordance with law, within the time frame, we may look at the inaction of the Corporation to be in defiance of the order passed by this Court, especially when we find that the Corporation has not taken any concrete steps in the matter pertaining to the application of the petitioner, despite our directions in the order dated 19.07.2010, for seven long years.

For the reasons aforesaid, the Writ Petition is partly allowed. The respondent-Corporation is directed to decide the application of the petitioner in accordance with law within four weeks. It is needless to mention that the Corporation cannot again rely on the reasons recorded in the order dated 08.07.2010 as the said order was set aside by our order dated 19.07.2010 in Writ Petition (L) No. 1604/2010 after holding that the action on the part of the Corporation of rejecting the application merely because the petitioner had not produced the certificate from the MMRDA and the competent authority (encroachment) was unjust.

The Rule is made absolute in the aforesaid terms with no order as to costs.

(Riyaz I. Chagla J.)

(Smt. Vasanti A Naik, J.)