

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

WRIT PETITION NO. 896 OF 2015

**Nem (India) Development and Constructions
Private Limited & Anr.**

... Petitioners

V/s.

State of Maharashtra & Ors.

... Respondents

Mr. Ankit Kothari i/b D.H.Law Associates for the Petitioners.

Mr. Rajiv Mane, AGP for the Respondent No.1.

Ms. Vandana Mahadik for the Respondent Nos. 2 to 4.

Mr. P. K. Dhakephalkar, Senior Counsel a/w Dr. Birendra Saraf a/w Mr. Rohan Sawant for the Respondent Nos. 5 and 6.

CORAM : A.S.OKA &

SMT. VIBHA KANKANWADI, JJ.

DATE : 22nd JUNE, 2017

P.C.:

. Heard learned Counsel appearing for the Petitioners, the learned AGP appearing for the first Respondent and the learned Senior Counsel appearing for the fifth and six Respondents.

2 The second Petitioner on behalf of the first Petitioner has tendered an undertaking affirmed today. The learned Counsel appearing for the Petitioner states that the second Petitioner is duly authorised to give the undertaking on behalf of the first Petitioner which is a Private Limited Company.

3 The petitioners by the said undertaking have accepted that offending work

subject matter of impugned notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 is illegal and unauthorised. Therefore, the Petitioners have expressed a desire to apply for regularisation. The contention of the fifth and sixth Respondents is that the Petitioners are not entitled to seek regularisation as the fifth and sixth Respondents are the owners of the building.

4 In view of the undertaking of the Petitioners, an opportunity deserves to be granted to the Petitioners to apply for regularisation. Accordingly, we dispose of the petition by passing following order:

ORDER

- a) Writ Petition is rejected;
- b) It will be open for the Petitioners to apply for the regularisation of the offending structure subject matter of the impugned notice within a period of two months from today. Needless to add that the application shall be made in prescribed form to the Competent Authority of the Municipal Corporation through an Architect;
- c) The petitioner shall forward a copy of the application to the fifth and sixth Respondents within a period of one week from the date on which the same is filed before the Competent Authority;
- d) It will be open for the fifth and sixth Respondents to file an objection in writing with the Municipal Corporation which shall be taken into consideration by the Municipal Corporation while deciding the application for regularisation;
- e) Application for regularisation shall be decided as expeditiously as possible, in any event, within a period of sixty days from the date of filing of the said application;
- f) Order passed on the application for regularisation be communicated to the Petitioners or their Architect;

g) Till the date of the communication of the order passed on the regularisation application to the Petitioners or their Architect, an action of demolition shall not be taken on the basis of impugned order;

h) If the order be adverse to the petitioners, the said protection will continue to operate for a period of one month from the date of communication of the order to the Petitioners or to their Architect, whichever is earlier;

i) On the failure of the Petitioners to apply for regularisation within the stipulated time of two months from today, the protection shall cease to apply and it will be open for the Municipal Corporation to take action for demolition;

j) All contentions of parties on the application for regularisation are kept open;

k) All concerned to act on an authenticated copy of this order.

(SMT. VIBHA KANKANWADI, J.)

(A.S.OKA, J.)