

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1111 OF 2015

GIC Housing Finance Ltd. .. Petitioner

Vs

The Asst. Municipal Commissioner. .. Respondent

—

Shri Sanjiv Punalekar along with Shri Dharma Raj i/b PRS Legal for the
Petitioner.

Ms.Vandana Mahadik for the Respondent.

—

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

DATED : 15TH JUNE 2017

ORAL JUDGMENT (PER A.S. OKA, J)

1. Rule. The Advocate for the Respondents waives service.
Considering the narrow controversy involved in this Petition, the same
can be disposed of finally at the stage of admission.

2. Initially, a notice under Section 354A of the Mumbai
Municipal Corporation Act, 1888 (for short “the said Act”) was issued to
the Petitioner alleging that the Petitioner was carrying out unauthorized
construction of full height wooden partition forming cabins as shown in
the sketch forming a part of the notice in red colour located at 6th floor

of Royal Insurance Building, near J.Tata Road, Churchgate, Mumbai – 400 020. It appears that on 9th May 2014, a notice under Section 351 of the said Act was issued to the Petitioner alleging unauthorized construction of full height wooden partition forming cabins on the 6th floor of the premises as shown in the sketch. On 28th May 2014, an order under Section 351 of the said Act was passed by the Designated Officer directing removal of full height wooden partition forming cabin as shown in the sketch.

3. It appears that an Application for regularization was submitted by the Petitioner through its Architect on 2nd June 2014. By a letter dated 16th April 2015, the Petitioner was called upon to produce certain documents. The Petitioner's Architect, on 11th April 2015 submitted various documents listed therein except No Objection Certificate of the Heritage Committee. A request was made to the Mumbai Municipal Corporation not to insist on the production of such No Objection Certificate.

4. There is an additional affidavit filed by the Petitioner of Shri Nayan Eknath Ghag dated 27th November 2015. A copy of the No Objection Certificate dated 27th May 2015 issued by the Mumbai Heritage Conservation Committee is annexed to the said affidavit. By a letter dated 8th October 2015, the Municipal Corporation

called upon the Petitioner's Architect to submit a No Objection Certificate of the Chief Fire Brigade Officer and Structural Engineer's Certificate. Necessary documents were forwarded by the Petitioner's Architect along with a letter dated 3rd November 2015 to the Municipal Corporation.

5. At this stage, learned counsel appearing for the Respondents produced a copy of the letter dated 27th April 2015 addressed by the Assistant Engineer of the Municipal Corporation to the Petitioner's Architect. Her submission is that the said letter clearly records that the Application for regularization has been rejected. We have perused the said letter. It merely records that a proposal for regularization dated 2nd June 2014 has been recorded and a notice under Section 351 of the said Act will be processed further. The said letter does not amount to a communication of rejection of the proposal. Moreover, the letter dated 27th May 2015 addressed by the Deputy Municipal Architect to the Petitioner's Architect records the subject of the letter as proposed regularization. The letter refers to regularization of erected full height wooden partitions. It records that Mumbai Heritage Conservation Committee has granted No Objection Certificate. In fact, by a letter dated 8th October 2015, the Assistant Engineer (B&F). 'A' Ward called upon the Petitioner's Architect to produce additional documents which are submitted by the Petitioner's Architect on 3rd

November 2015. Hence, we cannot accept the submission of the learned counsel appearing for the Respondents that the proposal for regularization has been rejected.

6. Hence, we dispose of the Petition by passing the following order:

ORDER :

- (a) We direct the appropriate Authority of the Mumbai Municipal Corporation to consider proposal dated 2nd June 2014 submitted by the Petitioner through its Architect Shri Rashmin Bhandare as well as documents submitted along with the letter dated 3rd November 2015 and to take a final decision on the said proposal as expeditiously as possible and in any event within a period of two months from today;
- (b) The decision taken on the proposal shall be communicated to the Petitioner's Architect;
- (c) Action of demolition on the basis of the notice under Section 351 of the Mumbai Municipal Corporation

Act, 1888 shall not be taken till the date of communication of the order to the Petitioner's Architect;

- (d) If Application for regularization is rejected, protection granted as aforesaid shall continue to operate for a period of one month from the date on the order is served to the Petitioner's Architect;
- (e) We have made no adjudication on the merits of the proposal of regularization;
- (f) Rule is partly made absolute on above terms.

(SMT.VIBHA KANKANWADI, J)

(A.S. OKA, J)