

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

WRIT PETITION (L) NO. 1492 OF 2017

M/s. Kanchan Industries Estate

... Petitioner

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr. Abhijeet Naik i/b Mr. Rajesh Khobragade for the Petitioner.

Mr. Hemant Haryan, AGP for the the Respondent No.1.

Ms. Pallavi Thakkar for the Respondent Nos. 2 and 3.

CORAM : A.S.OKA &

SMT. VIBHA KANKANWADI, JJ.

DATE : 14th JUNE, 2017

P.C.:

. Heard the learned Counsel appearing for the Petitioner, the learned AGP appearing for the first Respondent and the learned Counsel appearing for the second and third Respondents.

2 The challenge in this petition under Article 226 of the Constitution of India is to the action of demolition initiated by the Mumbai Municipal Corporation by the order dated 30th May, 2017 ('Exh. L' to the petition). Today the Secretary of the Petitioner, which is the Society registered under the Maharashtra Co-operative Societies Act, 1960 has tendered an undertaking on oath dated 14th June, 2017. It is taken on record and marked "X" for identification. In the said undertaking, the Petitioner has undertaken to make an application for regularization of the disputed structure which is the subject matter of Notice under Section 354A of the Mumbai Municipal Corporation Act, 1888 issued on 22nd May, 2015 and

impugned order dated 30th May, 2017. Undertaking states that the Petitioner will apply for regularization within a period of one month from today.

3 Very fact that the Petitioner has agreed to apply for the regularization shows that the Petitioner has accepted the correctness of the impugned order dated 30th May, 2017. The Petitioner has undertaken to remove the offending structure, if the application for regularization is rejected.

4 In view of the undertaking, we need not keep this Writ Petition pending and the same is disposed of by passing the following order:

a) Undertaking of Shri. Pravin Ashok Tolia, the Secretary of the Petitioner which is taken on record and marked “X” for identification, is accepted as the undertaking of the Petitioner;

b) It will be open for the Petitioner to make an application for regularization through a licensed Architect in prescribed form with the concerned Competent Authority of the Mumbai Municipal Corporation within a period of one month from today;

c) If such application is filed within a period of one month from today, the same shall be decided by the Mumbai Municipal Corporation within a maximum period of sixty days from the date of filing of the application;

d) The order passed on the application for regularization be communicated either to the Petitioner or to the licensed Architect appointed by the Petitioner;

e) Till the date of communication of the order passed on the regularization application to the Petitioner or to the Petitioner's Architect, whichever is earlier, the action of demolition shall not be taken on the basis of the impugned order dated 30th May, 2017 subject to condition that the Petitioner shall not make any additions and alterations to the structure subject matter of the impugned order;

f) If the order on the regularization application be adverse to the Petitioner, the limited protection granted by this order will continue for a period of one month from the date on which the order is communicated by the Mumbai Municipal Corporation to the Petitioner or to the licensed Architect, whichever is earlier;

g) We make it clear that on the failure to make an application for the regularization within a period of one month from today, the protection granted to the Petitioner will cease to apply and it will be open to the Respondents to take action of demolition;

h) We make it clear that we have made no adjudication on the merits of the regularization application which will be made by the Petitioner;

i) Writ Petition is disposed of on above terms. All contentions on merits are kept open.

(SMT. VIBHA KANKANWADI, J.)

(A.S.OKA, J.)