

pmw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1645 OF 2013**

Shivanjali Co-op. Hsg. Society Ltd. ... Petitioner
Vs.
Municipal Corporation of Greater Mumbai and Ors. ... Respondents

Mr. Jamshed Ansari for the Petitioner.
Ms. Pallavi Thakkar for the Respondent Nos.1 and 2.
Mr. K.R. Trivedi, AGP for the Respondent No.5.
Mr. Rafeeq Peermoideen i/by Ms. Sapna Rachure for the Respondent No.6.

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

DATE : 5th JUNE, 2017

PC.

1 Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the first and second respondents, the learned AGP for the fifth respondent and the learned counsel appearing for the sixth respondent. The substantive prayer in this Petition under Article 226 of the Constitution of India is prayer clause (a) which reads thus :-

“(a) That this Hon'ble Court may be pleased to issue Writ of Mandamus or any other appropriate Writ in the nature of Mandamus or any other appropriate Writ, order or direction directing the Respondent Nos.1 and 2.

- i. To prevent the Respondent Nos.3 and 4 or any of them from carrying out any commercial activities from the said illegal and unauthorized structure in the basement and to convert the basement for the use of car parking as per the approved plan of basement for the building Shivanjali situated at 70-B, Dr. Ambedkar Road, Khar (W), Mumbai – 400 052.
- ii. To demolish the wall illegally erected in the basement by the Respondent No.3 and 4 causing water logging resulting in spreading in malaria, dengue and other dangerous diseases to the members of the Petitioner society.
- iii. To demolish the two illegal and unauthorized structures erected by the Respondent No.3 and 4.”

2 Order dated 1st August, 2013 passed by this Court records a submission of the learned counsel appearing for the fourth respondent that the said respondent is not concerned in any manner with the alleged illegal structure. Accordingly, the sixth respondent was ordered to be impleaded as a party respondent.

3 The grievance of the petitioner is that notwithstanding the representations made by the petitioner to the Municipal Officers, steps have not been taken by the Municipal Corporation in respect of the illegalities pointed out in the representations and in particular various legal notices which are annexed to the Petition. The learned counsel appearing for the sixth respondent states that the said respondent has not committed any illegality. The learned counsel appearing for the first and second respondents has no instructions.

4 Considering the narrow controversy involved in the Petition, the same is disposed of by passing the following order :-

ORDER

- (i) We direct the Assistant Commissioner in-charge of H/West Ward of the Mumbai Municipal Corporation to visit the premises subject matter of the Petition after notice to the petitioner and the sixth respondent;
- (ii) If the Assistant Commissioner finds any illegality associated with the structures subject matter of this Petition, he shall forthwith initiate action including an action of demolition in accordance with law. Necessary action shall be initiated by him within a period of one month from the date of his visit;

- (iii) We must clarify here that no action of demolition shall be taken by the Municipal Corporation without giving an opportunity of being heard to all affected parties including the sixth respondent;
- (iv) We make it clear that we have made no adjudication on the merits of the controversy and all questions are left open to be decided by the concerned officer of the Mumbai Municipal Corporation;
- (v) The Assistant Commissioner shall visit the property in question within two weeks from the date on which this order is uploaded;
- (vi) The Petition is disposed of on above terms;
- (vii) All concerned to act upon an authenticated copy of this order.

(SMT. VIBHA KANKANWADI, J)

(A.S. OKA, J)