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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2933 OF 2017

Alisha Chauhan ...Petitioner
vs.
Municipal Corporation of
Greater Mumbai ...Respondent

Mr.Vineet Naik, Senior Counsel a/w Mr.Hussain
Dholkawala i/b Ganesh & Co. for the Petitioner
Ms Shital Mane for the respondent

CORAM : A.S.OKA, &
M.S.SONAK,JJ.
DATE : DECEMBER 19, 2017

P.C.:

1 Heard the learned senior counsel appearing for the petitioner and the learned counsel for the respondent-Municipal Corporation. Considering the narrow controversy involved, forthwith taken up for final disposal.

2 The case of the petitioner is that she has acquired flat Nos.1401 and 1402 on the fourteenth floor of the building more particularly described in paragraph 5 of the petition under the registered agreements for sale dated 7th November 2007 executed by the developer and that she was placed in possession on the same date. In the said flat Nos.1401 and 1402 (for short 'the said flats'), the petitioner was residing with her son. The case made out in the petition is that on 14th July 2017 at 3.00 p.m. when the petitioner's servant was in the said

flats, an Officer of the respondent-Corporation came and he delivered a notice under section 488 of the Mumbai Municipal Corporation Act, 1888 (for short 'the said Act'). The said notice recorded that on 15th and 17th July 2017, action of demolition will be taken on the basis of the notice under section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 (for short "the MRTP Act"). It is stated that on 15th July 2017, actual demolition work was commenced by the Officers of the respondent. Therefore, the petitioner filed a present petition seeking quashing of the aforesaid notice.

3 There is a reply filed by Shri Laxmikant Kolekar, designated Officer (I), Assistant Engineer (Building and Factory), H/W Ward of the respondent. In the reply, it is accepted that the notice on the basis of which impugned notice under section 488 of the said Act was issued, was not served to the petitioner, but it was served to the developer. In the affidavit, it is stated that on 15, 17 and 18th July 2017, demolition of the walls on 14th floor was carried out. He has placed on record the demolition report. The contention in the petition is that the work of partial demolition was done by the Municipal Corporation without following due process of law in as much as no notice under section 53(1) of the MRTP Act was served to the petitioner and the impugned notice was issued without giving an opportunity of being heard to the petitioner.

4 Faced with this difficulty, the learned counsel

for the respondent on instructions of Shri Laxmikant Kolekar states that the respondent has no objection if the petitioner is permitted to repair the said flats at her own costs for bringing back the same to its original condition in which it existed. She states that the right of the Mumbai Municipal Corporation of taking action of demolition in accordance with law may be protected. The learned senior counsel for the petitioner states that the aforesaid statements made by the respondents may be accepted and the petition may be disposed of.

5 Accordingly, we pass the following order:

(I) It will be open for the petitioner to carry out the requisite repairs to the said flats at her own costs for bringing back the said flats to its original condition in which the same existed as on 14th July 2017;

(II) Before commencing the work, a notice in writing shall be given by the petitioner to the Designated Officer, H/West ward who will be entitled to enter the said flats after due notice to the petitioner for the purposes of inspection of the work being carried out or after the work is carried out;

(III) Grant of permission to carry out repairs will not create any equity in favour of the petitioner;

(IV) Notwithstanding this order, it will be open for the respondent to initiate action of demolition in respect of the alleged illegal part of the said flats after serving a notice to the petitioner and

after giving an opportunity of being heard to the petitioner;

(V) We make it clear that we have made no adjudication on the question whether there are any illegalities associated with the said two flats;

(VI) All contentions of the parties in that behalf are kept open;

(VII) If an order of demolition is passed by the first respondent, the same shall be served on the petitioner. In such event, the order shall not be implemented for a period of 15 days from the date on which the said order is served to the petitioner;

(VIII) We make it clear that the notice under section 488 of the said Act served on 14th July 2017 will not bind the parties as far as said two flats are concerned and if any show cause notice is issued to the petitioner, the same shall be decided without being influenced by the said notice;

(IX) Rule is made partly absolute on above terms.

(M.S.SONAK,J.)

(A.S.OKA,J.)