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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.1925 OF 2017

Shri Pimpleshwar Sai Mitra
Mandal Chs Limited ...Petitioner
vs.
Municipal Corporation of
Greater Mumbai & Ors. ...Respondents

Mr.Ameet Mehta a/w Neha Gupta i/b Solicis Lex for
the Petitioner
Ms Pallavi Thakar for the respondent

CORAM : A.S.OKA, &
SMT.VIBHA KANKANWADI,JJ.
DATE : AUGUST 1, 2017

P.C.:

1 Heard the learned counsel appearing for the
petitioner. Clauses 2 and 3 of the order dated 20th
July 2017 read thus:

2 The learned counsel for the petitioner tenders
an undertaking signed by one Shri Sachin Shelar.
The said undertaking is taken on record and marked
'X-3' for identification. Paragraph 2 of the said
undertaking reads thus:

"2 I say that I have filed the present
Writ Petition before the Hon'ble Court and
the Hon'ble Court was pleased to grant ad-
interim reliefs. The ad-interim was granted
on one condition that the new constructed
columns should be removed 30th September 2017

by the petitioner. Hence, I hereby states that I shall comply with the order dated 30th July 2017. I hereby undertake to remove if any, new constructed columns made in the temple premises on or before 30th September 2017."

3 There was a categorical assurance given by the learned counsel for the petitioner on instructions of Shri Sachin Shelar that unconditional undertaking will be given to remove all illegal work on or before 30th September 2017. However, undertaking tendered today is not in terms of the said order. The undertaking is to remove newly constructed columns, if any.

4 The challenge in this petition is to the order dated 26th April 2017 informing the petitioner that the subject structure of the temple falls in 'B' category which is required to be demolished on or before 17th November 2017. The petitioner was informed that the work of demolition will start from 28th April 2017 as per the direction issued in PIL No.104 of 2010 to demolish all the structures falling in the category 'B' on or before 17th November 2017. Though in the impugned letter, the structure is stated to be categorized as category 'B', going by the averments made in the petition, it appears that a new structure has been very recently erected by the petitioner. Our attention is invited to the application dated 23rd March 2017 made by the petitioner addressed to the Ward Officer. The said

letter specifically records that tin sheet roof has been completely removed by the petitioner and that the petitioner was intending to put a concrete slab. There was a specific prayer made for grant of permission to cover the temple by using cement sheets and by reconstructing the pillars which were earlier in existence. In short, the said letter records that the ceiling of the temple was completely removed. Even the pillars of the temple were removed. A permission was sought to restore the temple structure. Moreover, the pillars of the temple were removed as a prayer was made to permit the re-construction of the pillars. Admittedly, in terms of the letter dated 26th April 2017 permission was not granted by the Ward Officer. On the last date, photographs of the temple were tendered across the bar by the learned counsel for the petitioner which have been marked as 'X-1' for identification. The said photographs show that new cement sheet ceiling was put on the temple and new columns have been erected.

5 Even under the order of the Apex Court, no religious structure constructed without obtaining permission after 29th September 2009 is entitled to any protection.

6 In the present case, the petitioner by taking law into his own hands has re-constructed the temple. Notwithstanding the solemn statement made by the petitioner which is recorded in the order dated 20th July 2017, the petitioner has chosen to give an

undertaking which is not in terms of the solemn statement. Therefore, undertaking tendered today cannot be accepted.

7 However, we propose to grant a reasonable time to the petitioner to remove the said temple in terms of the directions issued by this Court.

8 Accordingly, we dispose of the petition by passing the following order:

(I) Writ petition is rejected. However, we grant time of three months from today to the petitioner to remove the entire structure of the temple;

(II) On failure of the petitioner to remove the temple on or before 31st October 2017, the Municipal Corporation shall remove the same without giving any further notice of the same.

(VIBHA KANKANWADI,J.)

(A.S.OKA,J.)