

Jsn

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

WRIT PETITION (L) NO. 1930 OF 2016

Mr. Narendra Lalmani Mishra	... Petitioner
<i>Versus</i>	
The Municipal Corporation of Greater Mumbai	... Respondents

Mr. Kamallesh Tiwari, for the Petitioner.
Ms. Pallavi Thakar, for Corporation.

**CORAM: SMT. VASANTI A NAIK AND
MR. RIYAZ I. CHAGLA, JJ.**
DATED: 10TH NOVEMBER 2017

PC:-

By this writ petition, the petitioner challenges the order of the respondent, dated 13th July 2016 rejecting the application of the petitioner for regularisation of the structure. The petitioner seeks the revocation / cancellation of the notice of the corporation dated 13th July 2016 by which the petitioner was asked to demolish the structure immediately.

It is the case of the petitioner that the forefathers of the petitioner's were living in a structure which is a tin shed in the compound of the private property owned by the landlord. It is stated that since the petitioner is the tenant of the structure, the respondent corporation cannot seek the demolition of the same, as it was brought in to existence much before the datum line in the 1950's. It is stated that the structure occupied by the petitioner is not illegal as it existed on the site even before the datum line. It is submitted that the corporation was not justified in rejecting the

application for regularisation for the reasons mentioned in the impugned order dated 30th May 2016.

It is stated on behalf of the corporation that in pursuance of the orders passed by this Court in the petitions filed by the father of the petitioner, and the petitioner, the corporation had considered the application of the petitioner for regularisation of the structure. It is stated that the application for regularisation was however rejected as the proposal was neither submitted by the owner of the property nor was the consent of the owner secured by the petitioner for the regularisation before making the application. It is submitted that the expanse of the structure on the site is much more than what was reflected in the survey sheet. It is stated that the Asstt. Municipal Commissioner Estate's no objection certificate and the detailed FSI statement of the plot under reference was not furnished. It is submitted that the application was rightly rejected, specially when it was not made either by the owner or by his consent and the expanse of the structure on the site was much more than the tolerated structure.

On hearing the learned counsel for the parties and on a perusal of the orders passed by this Court in the writ petitions filed by the father of the petitioner Lalmani Mishra and the petitioner, it appears that it would not be proper for this Court to now consider whether the structure is an illegal structure or not. In the petition filed by the petitioner's father bearing writ petition (L) no. 1313 of 2005, this Court had permitted the petitioner in the said writ petition to appear before the competent officer of the corporation in respect of the objections to the notice for demolition.

Subsequently, when a notice of demolition was again issued, the petitioner filed writ petition (L) no. 54 of 2015 seeking permission to make an application before the EE (BP) for getting his structure regularised. The writ petition was partly allowed by granting liberty to the petitioner to file an application for regularisation, within four weeks. The respondent authorities were directed to consider the case of the petitioner for regularisation and pass an appropriate order in accordance with law. In furtherance of the order passed by this Court in writ petition (L) no. 54 of 2015, the application of the petitioner for regularisation was decided. We have perused the order rejecting the permission for regularisation. We do not find any illegality in the action on the part of the respondent corporation of rejecting the application for regularisation. The application for regularisation was neither made by the owner of the property nor was the consent of the owner secured before seeking regularisation. It was further found that though this structure could be classified as tolerated, the expanse of the structure was much more than the structure in the survey sheet of the year 1957. Certain other reasons were also recorded by the corporation for rejecting the application for regularisation. The structure is admittedly a tin shed and the petitioner's counsel has asserted the said fact while seeking the relief. It would not be permissible for the petitioner to canvass in this writ petition that the structure is not illegal and unauthorised. If the structure was not illegal and unauthorised, the petitioner should not have made a prayer for regularisation of structure in writ petition (L) no. 54 of 2015. On a reading of the order dated 14th January 2015 in writ petition (L) no. 54 of 2015, it appears that at the time of arguments, the prayer for seeking a direction permitting the

petitioner to make an application for getting his structure regularised was made. As the structure of the petitioner is illegal and as the corporation has rejected the application for regularisation of the same by recording cogent and convincing reasons, it would not be for this Court, to interfere with the said order in exercise of the writ jurisdiction.

In the circumstances of the case, we dismiss the writ petition with no order as to costs.

At the request of the learned counsel for the petitioner the ad-interim relief granted in favour of the petitioner is continued only for four weeks.

(RIYAZ I. CHAGLA J.)

(SMT. VASANTI A. NAIK, J.)