

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2080 OF 2014

Jai Bajrang Bali Coperative Housing Society (PROP)

... Petitioner

V/s.

The Municipal Corporation of Greater Mumbai and Ors.

... Respondents

Mr. Prathamesh Kamat a/w. Mr. Santosh S. Pathak
for the petitioner.

Ms. Vandana Mahadik i/b. Mr. Jerrold Joseph
Xavier for respondent nos.1 and 2.

Ms. Sunita M. Poddar for respondent no.3.

**CORAM : B.R. GAVAI, &
M.S. KARNIK, JJ.**

DATE : 14th September, 2017

P.C.:

. The petitioner approached this Court praying for a direction to respondent no.2 to act on the complaints of the petitioner-society with regard to construction of respondent no.3. Undisputedly, intially, on the basis of complaints made by the petitioner, the Corporation had issued a notice to respondent no.3 to remove unauthorised construction. Further, it appears that since respondent no.3 failed to provide any documents, the construction was partly demolished by the Corporation. However, subsequently, respondent No.3 has applied for grant of permission for repair and the said permission has been granted vide order dated 03rd December, 2013. Thereafter, again the petitioner has made

complaints to the respondent-Corporation to demolish the structure. However, since the Corporation has failed to take any action, the petitioner is again before this Court.

2. A perusal of the affidavit filed by Shri Avinash I. Engineer, working as an Executive Engineer, K/E Ward, Andheri (East), Mumbai, would reveal that while granting permission for repairs, the respondent-Corporation has considered various documents as to whether the construction was carried out by respondent no.3 ; as to whether the repairs are made by respondent no.3 in pursuance of the permission granted by the Corporation ; and as to whether the structure occupied by respondent no.3 is entitled to protection in view of the Government policy laid down from time to time are all disputed questions of facts and law.

3. The said questions cannot be decided without the parties leading their evidence in support of their respective claims. We find that such an exclusion will be permissible in an extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

4. The Petition is therefore, rejected. Further, it is made clear that if the petitioner takes recourse to the remedy available in law, opinion and the observations made herein would not influence the forum before whom the petitioner would initiate the proceedings.

(M.S. KARNIK, J.)

(B.R. GAVAI, J.)