

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

WRIT PETITION (L) NO. 2050 OF 2017

Jatoyoah Investments and Holdings Ltd. & Ors.

... Petitioners

V/s.

The Municipal Corporation of Greater Mumbai & Ors.

... Respondents

Mr. Atharva Dandekar for the Petitioner

Ms. Pallavi Thakar for the Respondent Nos. 1 and 2.

Mr. Abhishek Adke for the Respondent No.4.

Ms. Priyanka Vegad for the Intervenor.

CORAM : A.S.OKA &

SMT. VIBHA KANKANWADI, JJ.

DATE : 04th AUGUST, 2017

P.C.:

. Heard the learned Counsel appearing for the Petitioners, the learned Counsel appearing for the third Respondent and the learned Counsel appearing for the first and second Respondents.

2 On the prayer made by the learned Counsel appearing for the Petitioners, we permit the Petitioners to carry out the amendment for impleading Wellspring Healthcare Private Limited as a Party Respondent No.4. The amendment to be carried out within one week from the date on which this order is uploaded.

3 One Mr. Anthony Trindade has filed an undertaking on oath on behalf of the Petitioners which is taken on record and marked "U-1" for identification. In the said undertaking, the Petitioners have stated that they are not pressing the petition in respect of four stilt premises in 'B' Wing which are more particularly

described in paragraph 1 of the undertaking. In paragraph 2, it is stated that Petitioners will apply for the regularization of the premises on the second floor and that in the event their application for regularization fails, they will remove the unlawful constructions at their own cost.

4 The impugned order dated 24th July 2017 is in respect of part portion of stilt floor in wing 'B' of the subject building, ground floor dispensary and illegal work on a part of the second floor in A wing carried out beyond commencement certificate. As far as ground floor dispensary is concerned, it is not in dispute that possession thereof has been handed over to the Municipal Corporation.

5 The Petitioners have inducted the fourth Respondent as licensees in stilt No.B1, B2, A1 and A2 in the 'B' wing of the subject building known as "Allied". The learned Counsel for the fourth Respondent has tendered across the bar an undertaking by Kaushik Gautam Singh, the Chief Executive Officer of the fourth Respondent. The undertaking states that he is duly authorized by the fourth Respondent to give such undertaking. The undertaking is to vacate the four stilt premises within a period of three months from today. The said undertaking is taken on record and marked as 'U-2' for identification.

6 The learned Counsel appearing for the Petitioner on instruction states that the Petitioner will give undertaking to restore the said stilt premises to its original condition as per the sanctioned plan within a period of four weeks from the date of which Petitioners are placed in possession by the fourth Respondent. We accept the said statement. Hence, we dispose of the petition by passing following order:-

ORDER

a) The Petition is dismissed as not pressed;

- b) The undertaking of Shri. Anthony Trindade (marked 'U-1' for identification) is accepted as the undertaking of the Petitioners;
- c) The undertaking of Mr. Kaushik Gautam Singh (marked 'U-2' for identification) is accepted as the undertaking of the fourth Respondent Welspring Healthcare Pvt. Ltd;
- d) It will be open for the Petitioners to apply for the regularization of the offending work on the second floor which is the subject matter of the impugned order dated 24th July 2017 within a period of six weeks from today. The application shall be made by the Petitioners through a licence Architect in the prescribed form and by prescribed mode;
- e) If such application is made within a period of six weeks from today, the concerned Authority of the Mumbai Municipal Corporation shall decide the same within a period of 60 days from the date of filing of the application;
- f) The order passed on the application shall be communicated to the Petitioner's Architect. Till the date of communication of the order to the Architect, the impugned order dated 24th July 2017 shall not be implemented. In the event, the application for the regularization is rejected, the impugned order shall not be executed for a period of six weeks from the date of communication of the order to the Architect to enable the Petitioners to remove all the unauthorized work on the second floor in terms of notice dated 24th July 2017 on their own cost;
- g) We make it clear that if the Petitioners fail to remove the unauthorized work within a said period of six weeks, it will be open for the Mumbai Municipal Corporation to carry out the work of demolition of the offending part of the

second floor in terms of impugned order dated 24th July 2017 without issuing any further notice to the Petitioners;

h) In view of undertaking by the fourth Respondent, an action of demolition of the additions and alterations carried out in the stilt floor of 'B' Wing shall not be taken by the Municipal Corporation in terms of the impugned order dated 24th July 2017 subject to condition of the Petitioners filing an undertaking in this Court to remove the said offending work within a period of one month from the date on which the fourth Respondent places the Petitioners in possession of the premises in the stilt;

i) Such undertaking shall be filed within a period of one month from today, failing which the protection granted to the stilt portion shall cease to apply;

j) On the failure of the Petitioner to remove the illegal additions and alterations to the stilt portion within a period of four months from today, it will be open for the Municipal Corporation to remove the same without issuing any further notice to the parties;

k) We make it clear that we have made no adjudication on merit of regularization application proposed to be made by the Petitioner;

l) All concerns to act on an authenticated copy of this order.

(SMT. VIBHA KANKANWADI, J.)

(A.S.OKA, J.)