

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO.2153 OF 2014

Mr.Mahesh B. Parikh the Petitioner in person  
Ms Vandana Mahadik for the respondent No.1  
Mr.Bhavin Gada a/w Ms Yogini D. Gada i/b Harakhchand  
& Co. for respondent Nos.8 to 13.

P.C.:

2 The grievance of the petitioner appearing in person in this petition under Article 226 of the Constitution of India is as regards the failure of the Mumbai Municipal Corporation to take further action after a notice under section 354A of the Mumbai Municipal Corporation Act, 1888 (for short 'the said Act') was issued. Reliance is placed on inspection report, a copy of which is annexed as Exhibit "X" for pointing out that the work of temple carried out by the respondent No.8 mentioned therein

is illegal.

3 The respondent Nos.9 and 11 for themselves and on behalf of the respondent No.8 have filed an affidavit affirmed today. In the said affidavit, they have referred to the aforesaid notice under section 354A, the inspection report and the notices dated 3rd June 2011 and 26th July 2012 issued by the Mumbai Municipal Corporation. In paragraph 2, on behalf of the respondent No.8, an undertaking has been given to apply for regularization of the illegalities which are pointed out in the notices. Paragraph 2 of the said affidavit reads thus:

"2 We undertake to this Hon'ble Court that we shall within 3 months from today make regularization application before concerned authorities of Municipal Corporation of Greater Mumbai for regularizing the work carried out in Jain Temple beyond approval of Plans. In the event if after following procedure under the MRTP Act as regards and in respect of the regularization, if any portion or part or work is not regularized then and in that event we undertake to this Hon'ble Court at our costs to remove and/or demolish such portion or part thereof which is not regularized."

4 A copy of the undertaking has been furnished to the petitioner appearing in person who states that he has no objection if a permission is granted to

the respondent No.8 to apply for regularization.

5 Considering the nature of the illegalities pointed out in the inspection report and notices issued by the respondent no.1-Corporation, a permission deserves to be granted to the respondent No.8 to apply for regularization.

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

- (I) We accept the statements made in the affidavit of the respondent Nos.9 and 11 which is taken on record and marked 'X-1' for identification as the statements made on behalf of the respondent No.8. We accept the said statements as undertakings of the respondent No.8. It will be open for the respondent No.8 to make an application for regularization in a prescribed format through a licenced architect to the appropriate Officer of the Mumbai Municipal Corporation within a period three months from today;
- (II) If such application is made, the concerned Authority of the Municipal Corporation shall decide the same within a maximum period of 60 days from the date of the application;
- (III) The order passed on the said application shall be communicated either to the respondent No.8 or to the licenced architect of the respondent No.8;
- (IV) Needless to add that till the date of

communication of the order passed on the regularization application to the respondent No.8 or to the architect of the respondent No.8, whichever is earlier, the action of demolition in respect of the subject structure shall not be taken by the Municipal Corporation;

(V) On the failure of the respondent No.8 to apply for regularization within a period of three months from today, the protection granted as above will come to an end and it will be open for the respondent No.1 to take action of demolition;

(VI) If the order passed on the regularization application be adverse to the respondent No.8, the action of demolition/removal shall not be taken by the respondent No.1 for a period of two months from the date of the receipt of the communication of the order to the respondent No.8 or to the Architect, whichever is earlier;

(VII) In the event of the failure of the respondent No.8 to remove/demolish the offending work in terms of the undertaking, the respondent No.1 shall proceed to demolish/remove the same without any further notice to the respondent No.8.

(VIII) We make it clear that we have made no adjudication on merits of the application for regularization which may be made by the respondent No.8;

(IX) A copy of the application for regularization which may be made by the

respondent NO.8 shall be served to the petitioner appearing in person within a period of one week from the date of its filing;

(X) Writ petition is disposed of.

(VIBHA KANKANWADI,J.)

(A.S.OKA,J.)