

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

WRIT PETITION (L) NO. 2318 OF 2017

Tanuja Jayantilal Bhagat	..	Petitioner
vs.		
Municipal Corporation of Greater Mumbai & Anr.	..	Respondents

Mr. Ashok Pande for Petitioner.
Ms S. Mane for MCGM - Respondents.

CORAM : M. S. SONAK, J.
DATE: 22 AUGUST 2017

P.C :

- 1] Not on Board. In view of urgency, taken on production board.
- 2] Rule.
- 3] With the consent and at the request of the learned counsel for the parties, Rule is made returnable forthwith.
- 4] Mr. Pande, learned counsel for the petitioner submits that the petitioner upon receipt of show cause notice dated 26th July 2017, applied for inspection of documents which were relied upon by the MCGM for issuing the notice under reference. No such inspection was offered and instead, impugned order has been made on 11th August 2017 directing demolition of the mezzanine floor. He points out that the impugned order states that the petitioner or the petitioner's Advocate may approach the concerned department for obtaining inspection. He points out that the petitioner or the

petitioner's Advocate is ready to approach the concerned department and avail inspection. However, in the meanwhile, the MCGM was not at all justified in ordering demolition.

5] Ms Mane, learned counsel for the MCGM submits that the petitioner has nowhere specified the documents and on basis of some vague application, the petitioner has only protracted the matter. She submits that despite sufficient time, the petitioner, neither indicated any sufficient cause nor submitted any documents to establish that the construction in question is indeed authorized. Ms Mane submits that the petition may not be entertained because the petitioner has alternate remedy for redressal of her alleged grievance.

6] The submissions of Ms Mane as regards alternate remedy, is ordinarily required to be accepted. However, in the peculiar facts of the present case, the present petition is entertained because, the allegation with regard to non compliance with principles of natural justice has been substantially made out. The petitioner had applied for inspection / copies of certain documents and admittedly, such documents were neither offered for inspection nor copies of the same were furnished to the petitioner. Instead, the impugned order, itself states that the petitioner or her advocate, may approach the concerned department for inspection of the documents. In these

circumstances, Mr. Pande is right in his submission that no useful purpose will be served by availing inspection, if in the meanwhile, the construction in question is put to demolition in terms of the impugned order.

7] Ms Mane, is also right in her submission that the petitioner, cannot be permitted to embark upon some sort of phishing expedition and seek vaguely all documents in relation to the premises or the construction in question.

8] Mr. Pande, on basis of instructions from the petitioner, has however restricted the request to inspection of the sanctioned plans of the building and the assessment records of the last five years. This, to a certain extent, takes care of Ms Mane's submission with regard to the vagueness of the request.

9] Accordingly, the impugned order is set aside not on merits but only on the ground of non compliance with principles of natural justice. Further, the petitioner, may approach the Executive Engineer (B.P.) City and A.A. & C. G/South Ward within a period of ten days from today. The concerned Executive Engineer / Officer of the said Department to offer to the petitioner inspection of the sanctioned plans of the building and the assessment records in respect of the suit premises for the last five years. In case, the petitioner, requires copies, the petitioner, without any delay, to pay

the requisite charges and thereupon, copies of such documents may be furnished to the petitioner. The entire exercise of inspection / copies to be furnished to the petitioner, to be completed within a period of twenty days from today. The petitioner is then granted a week's time to file her reply to the show cause notices dated 26th July 2017. Upon receipt of the reply, the concerned officer of the MCGM is to fix a date to afford opportunity of personal hearing to the petitioner and thereafter pass final order. The entire exercise is to be completed within a period of fifteen days from the date of personal hearing. The petitioner is to cooperate with the respondents and not seek any adjournments. The petitioner is also directed to maintain *status quo* in respect of the suit premises.

10] It is clarified that this Court has not adverted to the merits of the matter and the MCGM / concerned officer to dispose of the show cause notice on its own merits and in accordance with law.

11] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

12] All concerned to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)