

Sharayu.

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

WRIT PETITION (L) NO. 2497 OF 2017

WITH

NOTICE OF MOTION NO. 543 OF 2017

Mr. Zaiul Haq Zainul Haq

...Petitioner

Versus

**Municipal Corporation of Greater
Mumbai & Ors.**

...Respondents

Mr. Bharat H. Mehta, for the Petitioner.

Ms. Pallavi Thakar, for the Respondents-MCGM.

**CORAM : SMT. VASANTI A NAIK AND
RIYAZ I. CHAGLA, JJ.**

DATE : 24 November 2017

ORDER :

By this writ petition, the petitioner seeks a direction against the respondents to reconstruct the 1st floor premises on plot Nos. 63, 63A, Dr. Ambedkar Road, Bandra (West). In the alternative, the petitioner seeks permission to construct the 1st floor premises as they stood before the demolition on 24th June 2017.

According to the petitioner, though the

petitioner had made an application for regularization of the premises on the 1st floor, the corporation authority had without deciding the application for regularization, illegally demolished the 1st floor premises on 24th June 2017. It is stated that in the circumstances of the case, permission may be granted to the petitioner for the reconstruction of the 1st floor premises and direct the respondent-corporation to decide the regularization application of the petitioner.

The relief sought by the petitioner cannot be granted in the circumstances of the case. If the construction of the petitioner is demolished, when the regularization application is pending and if the construction is not in existence, the petitioner may take appropriate steps for seeking damages for the alleged illegal demolition. Since the 1st floor premises are demolished, the prayer made by the petitioner for regularization of the 1st floor premises becomes infructuous. A direction cannot be issued against the respondent-corporation to decide the application for regularization. Similarly, permission cannot be granted to the petitioner to reconstruct the 1st floor, as it stood prior to the demolition on 24th June 2017. Since the petitioner had applied for regularization, it is apparent that the construction of the 1st floor premises was not legal. If that be so, a direction cannot be issued against the corporation to permit the petitioner to reconstruct the 1st floor

premises, as they stood before they were demolished on 24th June 2017. The petitioner is free to apply for permission to reconstruct the premises by submitting the plans, as per the regulations. So also, the petitioner can avail the appropriate remedy for seeking action against the corporation for illegal demolition of the structure.

Since the relief sought by the petitioner cannot be granted in exercise of the writ jurisdiction, we dispose of the writ petition with no order as to costs. The points raised in the petition pertaining to the illegal demolition, are kept open.

With the disposal of the writ petition, the notice of motion stands disposed of.

[RIYAZ I. CHAGLA J.] [SMT. VASANTI A NAIK, J.]