

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

WRIT PETITION NO. 3009 OF 2014

Oscar Builders Private Limited
and another

... Petitioners.

Versus

Municipal Corporation of
Greater Mumbai and others

... Respondents.

....

Mr. Sameer Pandit a/w ms. Sarrah Khambatti i/b. Wadia Ghandy
& Co. for the Petitioner.

Ms. Sheetal Mane for MCGM.

Mr. Altaf Khan i/b. Ms. Anjali Awasthi for Respondent Nos.3, 4
and 5.

Mr. Shashank Fadia a/w Ms. Priyanka Fadia for Respondent Nos. 6
to 10, 18 and 19.

Mr. Arif Doctor a/w Ms. Neha Dhuru i/b. Mulla & Mulla for
Respondent Nos. 11 to 16.

Mr. Deepraj Shetye i/b. L.H. Hingu for Respondent Nos.17 and 20.

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***CORAM : Smt. Vasanti A Naik &
Riyaz I. Chagla, JJ.***

DATE : 07th December, 2017.

P.C. :

By this writ petition, the petitioner seeks a direction against the Corporation and its authorities to implement the notices dated 05.02.2002, 20.04.2009 and 26.09.2013, issued under Section 353 and 351 of the Mumbai Municipal Corporation Act and to comply with the directions passed by the High court on 25.01.2002 and 25.06.2004.

We find that in an Appeal against Order filed by the petitioner bearing A.O. no.45/2002, this court had passed an order by the consent of the parties on 25.01.2002. By the said order, this Court had permitted the Corporation to take appropriate action against the parties that had made illegal construction and demolish the offending work, if any, in accordance with law. Notices were issued against some of the occupiers of the flats in pursuance of the said order in the year 2002. Separate Civil suits were filed by the petitioner-builder-developer against several occupants of the building in the year 2001 and notice of motion was filed in the said suits. By the prayers made in the said notice of motion, the petitioner, who was the plaintiff in the said suit had sought a direction against the Corporation to take further action in pursuance of the notice served on the concerned parties, who are the respondents to this petition, under Section 353 of the Mumbai Municipal Corporation Act. While disposing of the notice of motion filed in each of the suits, this Court had directed the Mumbai Municipal Corporation to proceed in the matter pertaining to the issuance of notice under Section 353 of the Mumbai Municipal Corporation Act, irrespective of the pendency of of the suits filed by the petitioners. A direction was issued to the Mumbai Municipal Corporation to proceed with the notices that had been issued under section 353 of the Mumbai Municipal Corporation Act and to pass appropriate orders in accordance with law.

It is apparent from the aforesaid set of facts that the petitioner has moved this Court time and again for seeking a

direction against the Corporation to initiate action against the erring respondents and for the removal/demolition of the illegal construction. The same relief cannot be sought by a party time and again by filing successive proceedings. The petitioner had filed the proceeding in the years 2001 and 2002 and in both the proceedings appropriate orders, directing the respondent-Corporation to take action in accordance with law, were passed. If the Corporation had not taken action in pursuance of the said orders, the petitioner had other remedies. The petitioner would however not be entitled to file three proceedings for seeking the same relief, when in the two earlier proceedings the relief is granted in favour of the petitioner. It is well settled that the relief granted by the Court to a party cannot be sought by the party time and again by filing successive proceedings merely because the earlier orders are not implemented. This would not only vex the opponents but would also vex the Court. The petitioner was in slumber for more than ten years after the orders in the two proceedings were passed in favour of the petitioner. It would be necessary to note that the petitioner is the builder/developer who had constructed the building in the year 2000 and the occupation certificate for the same was granted in the year 2001-2002. We are surprised that the petitioner, being the builder-developer of the building and having constructed the building in the year 2000-2001 should complain about certain illegal construction. We are unable to gauge as to why the petitioner has approached this Court for the third time after more than 12 years when the order was passed in favour of the petitioner in the first proceeding that appropriate action may be taken by the Corporation against the

erring respondents. We are not inclined to entertain this writ petition as this is the third proceedings in which the petitioner is seeking the relief that was sought in the two earlier proceedings and the same was granted in his favour.

In the circumstances of the case, we dismiss the writ petition with no order as to costs.

(Riyaz I. Chagla J)

(Smt.Vasanti A Naik, J)