

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

**SHOW CAUSE NOTICE NO. 368 OF 2016
IN
WRIT PETITION NO. 2516 OF 2013**

Jitendra G. Janawale ..Petitioner

v/s.

The State of Maharashtra & Ors. ..Respondents

**WITH
WRIT PETITION NO. 3405 OF 2013**

Mehul Vijay Vora ..Petitioner

v/s.

The State of Maharashtra & Anr. ..Respondents

Mr. Sagar Rane for the Petitioner in WP/2516/2013.

Mr.P.K.Dhakephalkar, Sr. Advocate a/w. Mr. Karan Bhosale, Mr. Purav Damania and Mr.Abhay Arora i/b. Neha Bhosale for the Petitioner in WP(L)/3205/2016.

Mr.U.S.Upadhyay AGP for the Respondent No.1. State in WP/2516/2013.

Mr. Kunal Bhanage, AGP for the Respondent No.1 State in WP/(L)/3205/2016.

Mr.A.Y.Sakhare, Sr. Advocate a/w. Mrs. Geeta Joglekar for the Respondent Nos.2 and 3 BMC.

Mr.P.K.Dhakephalkar, Sr. Advocate a/w. Mr. Karan Bhosale, Mr. Purav Damania and Mr.Abhay Arora i/b. Mr.P.J.Damania for the Respondent Nos.4 and 5 in WP/2516/2013.

CORAM : A.S.OKA & ANUJA PRABHUDESSAI, JJ.
DATED : 18TH JANUARY, 2017

P.C.

1. Writ Petition No.2516 of 2013 was finally disposed of by Judgment and Order dated 17th June, 2016. The directions issued by this Court were in clauses (1) to (3) of paragraph no.17 which read thus:

“(I) The Petitioner shall produce an authenticated copy of this Judgment and Order before the Commissioner of the Mumbai Municipal Corporation. The Commissioner shall take further action in accordance with Section 18 of the said Act within six weeks from the date on which an authenticated copy of this Judgment and Order is produced before him;

(II) We direct the Assistant Commissioner of the Mumbai Municipal Corporation in charge of K/w Ward to visit the structure in question with a view to ascertain whether any further illegal construction has been carried

out. If the Officer finds that illegal constructions have been carried out, the Assistant Commissioner shall forthwith take steps for removal of the same. He will also ascertain whether the work subject matter of the Order dated 1st April 2011 has been removed. If he finds that the entire offending work in terms of the Order dated 11th April 2011 has not been removed, he will forthwith take action of removal. The action of demolition shall be taken after serving a notice to the respondent no.4 in accordance with law;

(III) On receipt of an authenticated copy of this Judgment and and Order, the Municipal Commissioner shall take action in accordance with law.”

2. When Writ Petition No.2516 of 2013 was listed under the caption of “Directions” for reporting compliance with the Judgment and Order dated 17th June 2016, it was noticed that the Mumbai Municipal Corporation had regularized additions and alterations as well as approved the proposed change of user on the application made by the Petitioner in Writ petition (L) No. 3405 of 2016. In the Order dated 10th October, 2016 this Court observed that not only the Municipal Corporation has committed a breach of clause II of the

operative part of the Judgment, but the offending structure has been regularized on 30th July, 2016. Therefore, this Court observed that the action of the Municipal Commissioner of granting sanction on 2nd June, 2016 and the action of granting approval to the proposal for regularization on 30th July, 2017 constitutes a contempt of this Court. Notice was issued to the Municipal Commissioner calling upon him to show cause as to why action should not be initiated against him under the Contempt of Court Act, 1971 for committing civil as well as criminal contempt.

3. There are affidavits filed on record. There is an affidavit filed on 10th December, 2016 by the Municipal Commissioner, Shri Ajoy Mehta, by way of additional affidavit. In the said affidavit, it is stated that a show cause notice dated 6th December, 2016 has been served to the Petitioner in Writ Petition (L) No.3405 of 2016 and to his Architect. The affidavit further states that on 7th December, 2016 an action has been Ordered to be initiated against the erring officers. In the earlier affidavit dated 16th November, 2016 filed to the show cause notice, the Municipal Commissioner had come out with the

case that the fact that the Judgment in the Writ Petition No.2516 of 2013 was reserved was not brought to his notice when he granted sanction.

4. By the Order dated 21st December, 2016 passed by the Municipal Corporation, the Order dated 30th July, 2016 granting regularization of addition and alteration and the proposed change of user has been revoked.

5. The learned Senior Counsel appearing for the Municipal Commissioner has produced for perusal of the Court a file which shows that on 16th January, 2017 the Municipal Commissioner has taken action against the erring Officers.

6. Writ Petition (L) No. 3405 of 2016 has been preferred for challenging the Show Cause Notice dated 6th December, 2016, and also for challenging the aforesaid Order dated 21st December, 2016. The Petition was amended for incorporating a challenge to the Order dated 21st December, 2016.

7. The learned Counsel appearing for the Mumbai Municipal Corporation stated that in respect of the property subject matter of the disposed of Writ Petition No. 2516 of 2013, only one proposal for regularization and change of user was approved and the said proposal was approved by the Order dated 30th July, 2016. A copy of the said Order dated 30th July, 2016 is taken on record and marked A-1 for identification in Writ Petition (L) No.3405 of 2016. The said communication dated 30th July, 2016 shows that the same was sanctioned on the basis of the application/letter dated 6th July, 2016 submitted by the Architect of the Petitioner in the said writ petition.

8. The learned Senior Counsel appearing for the Petitioner in Writ Petition (L) No.3405 of 2016, on instructions, states that the Petitioner will not press a challenge to the show cause notice dated 6th December, 2016 and the Order dated 21st December, 2016 passed by the Mumbai Municipal Corporation. He states that the Petitioner will make a fresh application for regularization of the additions and alterations and the change of user in existing bungalow, out-house

and a garage to that of cloth and garment shops of carpet area admeasuring 64 sq. meter and 75 sq. meter on the plot bearing CTS Nos. 1233, 1233/1 to 6 and final Plot No.7/B of TPS III of Vile Parle at the junction of Bajaj Road and Besant Road, Vile Parle (West), Mumbai. We accept the said statement. He submits that till the regularization application is decided, a direction be issued not to take any action in terms of clause (II) of paragraph 17 of Judgment and Order dated 17th June, 2016.

9. The learned Counsel appearing for the Petitioner in Writ Petition No.2516 of 2013 submits that in terms of the Judgment and Order dated 17th June, 2016 proceedings for disqualification under Section 18 of the Mumbai Municipal Corporation Act, 1988 have been initiated in the Court of Small Causes at Mumbai. His contention is that the proceedings should not be delayed on the ground that the Petitioner in Writ Petition (L) No. 3405 of 2016 has applied for regularization.

10. We have perused the Order dated 10th October, 2016 under

which a Show Cause Notice was Ordered to be issued to the Municipal Commissioner. In view of the Order dated 21st December, 2016, now the sanction granted by the Municipal Commissioner on 2nd June, 2016 and the Order granting proposal for regularization issued on 30th July, 2016 stand withdrawn. As the Petitioner in Writ Petition (L) No.3405 of 2016 has given up the challenge to the Order dated 21st December, 2016 made by the Municipal Corporation, as of today, the additions and alterations made by the Petitioner in Writ Petition (L) No.3405 of 2016 and the change of user are not regularized. The Municipal Corporation has taken action against the erring officers, as noted earlier. Clause (II) of paragraph 17 of the final Judgment and Order in Writ Petition No.2516 of 2013 was not implemented obviously because of the Order dated 30th July, 2016. Considering the fact that now the Order granting sanction on 2nd June 2016 and the Order granting proposal for regularization passed on 30th July, 2016 has been withdrawn by the Order dated 21st December, 2016 and as the Order dated 21st December, 2016 has attained finality, it is not necessary to initiate proceedings for committing contempt against the Municipal Commissioner. In view

of the facts narrated earlier, at this stage, it is not necessary to take action for committing civil or criminal contempt against the Municipal Commissioner. Therefore, we propose to drop the show cause notice.

11. If the application for regularization of additions and alterations and regularization of the change of user made by the Petitioner in Writ Petition (L) No.3405 of 2016 is rejected, the Municipal Commissioner is bound to take action in accordance with law and in terms of clause (II) of paragraph 17 of the Judgment in Writ Petition 2546 of 2013 as the Judgment and Order dated 17th June, 2016 in the said writ petition has attained finality.

12. We make it clear that the proceedings for disqualification initiated by the Municipal Corporation cannot be stayed or hearing thereof cannot be postponed only on the ground that the Petitioner in Writ Petition (L) No.3405 of 2016 has applied for regularization.

13. The learned Senior Counsel appearing for the Petitioner states

that the application for regularization will be made by the Petitioner in Writ Petition (L) No.3485 of 2016 within a period of four weeks from today. We accept the said statement. Hence, we pass the following Order:-

- i) Show cause Notice No.368 of 2016 issued under the Order dated 10th October, 2016 is hereby discharged;
- ii) Writ Petition (L) No.3405 of 2016 is disposed of as not pressed;
- iii) We make it clear that Order dated 21st December, 2016 passed by the Mumbai Municipal Corporation on Show Cause Notice dated 6th December, 2016 has attained finality;
- iv) It will be open for the Petitioner in Writ Petition (L) No. 3405 of 2016 to file a fresh application for regularization of addition and alterations and change of user within the period of four weeks from today. Needless to add that such an application shall be made in accordance with Rules and Regulations;

v) If such an application is made within a period of four weeks from today, the appropriate authority of the Municipal Corporation shall decide the same within a period of 60 days from the date of receipt of the application. The Order passed on the said application be communicated to the Architect of the Petitioner in the aforesaid petitions;

vi) As soon as the application is made by the Petitioner for regularization, intimation thereof shall be issued by the Municipal Corporation to the writ Petitioner in Writ Petition No.2516 of 2013. Within a period of two weeks from the date of receipt of the intimation, it will be open for the said Petitioner to file objections in writing, which shall be considered while deciding the proposal for regularization and change of user;

vii) Till the date on which the decision on regularization proposal is submitted to the Architect of the Petitioner, the action in terms of clause (II) of paragraph 17 of the Judgment and Order dated 17th

June, 2016 shall not be taken. If the proposal for regularization is rejected, an action shall not be taken in terms of the said clause (II) for a period of two weeks from the date on which the decision is communicated to the Architect of the Petitioner in Writ Petition (I) No. 3405 of 2016. If application for regularization is not made within stipulated time, the protection granted above shall cease to operate;

viii) We make it clear that subject to what is observed above, the Municipal Corporation is under obligation to abide by the Judgment and Order dated 17th June, 2016 in Writ Petition No. 2516 of 2013;

ix) We make it clear that the proceedings for disqualification initiated by the Municipal Corporation against the Respondent no.5 in Writ Petition No.2513 of 2013 shall be expeditiously decided in accordance with law. The proceedings for disqualification shall not be adjourned only on the ground that a proposal for regularization made in terms of this Order is pending before the Municipal Corporation;

- x) All contentions of the parties on the proposal of regularization are expressly kept open;
- xi) According to the Petitioner in Writ Petition (L) No.3405 of 2016, a sum of Rs.19,16,000/- was deposited by him with the Municipal Corporation for sanction of the proposal which was sanctioned on 30th July, 2016;
- xii) If a fresh proposal made by the Petitioner is sanctioned by the Municipal Corporation, the aforesaid amount shall be appropriated by the Municipal Corporation towards charges, premium etc. payable by the Petitioner.
- xiii) All concerned to act on an authenticated copy of this Order.

(ANUJA PRABHUDESSAI, J.)

(A.S.OKA, J.)