

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

WRIT PETITION (L) NO. 3244 OF 2017

Noor Mohammad Shaikh ... Petitioner.

Versus

The Municipal Corporation of
Greater Mumbai and others ... Respondents.

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Mr. Suryajeet P. Chavan for the Petitioner.

Ms. Pallavi Thakar for MCGM.

Mr. Kedar Dighe, AGP for Respondent No.5.

Mr. Bhavin Gada a/w Ms. Yogini Gada i/b. Harakhchand and Co.
for Respondent Nos.6 and 7.

Mr. Noor Mohammad Shaikh Petitioner in person is present.

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

DATE : 23rd November, 2017.

P.C. :

By this writ petition, the petitioner challenges the order of the State Government rejecting the application of the petitioner for regularization of the illegal construction under Section 47 of the Maharashtra Regional and Town Planning Act.

Since it was found that the construction made by the petitioner on the concerned site was illegal, the Corporation had served a notice on the petitioner for the demolition of the structure. The petitioner had applied to the Corporation for the regularization of the structure. The Corporation however, rejected the application of the petitioner. The petitioner challenged the said order in an appeal before the State Government under Section

47 of the Maharashtra Regional and Town Planning Act. The appeal of the petitioner was rejected by the State Government by the impugned order.

According to the petitioner, though the petitioner is the owner of the structure and a civil suit in which the issue of title of the petitioner on one hand and the respondent Nos.6 and 7 on the other is involved, the State Government has wrongly rejected the application of the petitioner by observing that the petitioner has not produced the documents of his title. It is submitted that the petitioner is the owner of the property on which the structure was erected and since the plans for construction were not sanctioned, an application for regularization was made. It is submitted that the order of the State Government rejecting the application of the petitioner is liable to be set aside as the State Government was not competent to consider the title of the petitioner to the property.

On hearing the learned counsel for the petitioner and on a perusal of the impugned order as also the other documents annexed to the petition and the copies of the other documents that are tendered in the Court today for our perusal that there is no illegality in the order of the State Government rejecting the application of the petitioner. It is held in the order of the State Government that despite the grant of opportunity to the petitioner, the petitioner did not submit any documents, pertaining to his title i.e. the record of rights or any other document to show that the petitioner had title over the property. Since the application for regularization of the structure could be made only by the owner of the same or by the occupant of the property with the consent of

the owner, the State Government rightly rejected the application of the petitioner as no document, whatsoever was produced by the petitioner before the State Government to prove his title over the said property. Even in the suit filed by the respondent Nos. 6 and 7 against the petitioner, this Court had held that the petitioner has not *prima facie* pointed out that the petitioner has title to the suit property. Copies of some documents were tendered in the Court today for our perusal to point out that the petitioner has title to the property. However, we do not find any registered document to show the title of the petitioner. A copy of the power of attorney was sought to be tendered in the Court today. Apart from the doubting the authenticity of the said document, it is necessary to note that the said document does not give any power or authority to the petitioner to seek the regularization of the structure. In the absence of any document to *prima facie* show the title to the property, the State Government rightly held that the application of the petitioner for regularization of the illegal construction could not be granted.

Since we do not find any apparent illegality in the order of the State Government, we dismiss the writ petition with no order as to costs.

At this state, the learned counsel for the petitioner, on instructions from the petitioner who is present in the Court today states that the petitioner would vacate the premises within two weeks and till then no action for demolition of the illegal structure may be undertaken by the Corporation authorities.

We accept the statement made by the learned counsel for the petitioner, which would be binding on the petitioner. The Corporation is therefore free to take appropriate steps for demolition of the building after two weeks.

(Riyaz I. Chagla J)

(Smt.Vasanti A Naik, J)