

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

WRIT PETITION (LDG.) NO. 3276 OF 2017

Deepa Dilip Borade. ... Petitioner.
V/s.
Mumbai Municipal Corporation and others. ... Respondents.

Ms.Aditi Naikare i/b. P.J.Thorat for the petitioner.
Ms.Vandana Mahadik for the respondents.

CORAM : A.S.OKA AND M.S.SONAK, JJ.

DATE : 20th December 2017.

PC.:

Heard the learned counsel for the parties. By the impugned order, the Assistant Commissioner of Municipal Corporation has held that the petitioner has failed to prove that her structure was in existence before 1st April 1962. Therefore, it was held that the petitioner is not eligible to get the premises having area equivalent to the area of the existing structure. Considering the fact that the structure was existing prior to 1st January 2000, under the impugned order, it is held that the petitioner is entitled to maximum area of 225 sq.ft.

2. The contention of the petitioner is that the structure was in existence before 1st April 1962. For dealing with the said issue, remedy of appeal as stated in clause-9 of the circular dated 20th March 2017 is available. The learned counsel appearing for the petitioner, therefore, seeks permission to withdraw this petition with liberty to file appeal before the concerned Deputy Municipal Commissioner.

3. If an appeal is filed within a period of one week from today, the same shall be entertained by the concerned Deputy Municipal Commissioner considering the fact that the present petition was filed on 20th November 2017 and that the same remained pending till today.

3. Accordingly, we pass the following order:

- (i) The petition is disposed of as withdrawn with liberty to the petitioner to prefer an appeal as stated above within one week from today;
- (ii) If the appeal is filed within a period of one week from today, the concerned Appellate Authority shall decide the same as expeditiously as possible and, in any event, within the time specified in the circular dated 20th March 2017;
- (iii) The decision of the Appellate Authority be communicated to the petitioner. Till the date of communication of the decision in appeal of the Appellate Authority to the petitioner, the Municipal Corporation shall not take steps to remove the subject structure. If the appeal is dismissed, the said protection shall continue for a period of fifteen days from the date on which the communication of the decision in appeal is served on the petitioner;
- (iv) All contentions on merits are kept open;

(M.S.SONAK, J.)

(A.S.OKA, J.)