

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

**WRIT PETITION (L) NO.3022 OF 2015
WITH
CHAMBER SUMMONS NO.165 of 2016
IN
WRIT PETITION (L) NO.3022 OF 2015**

Mr. Ramesh Agrawal ...Petitioner

Vs.

Municipal Corporation for
Greater Mumbai and others ...Respondents

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Ms. Jennifer Michael a/w. Mr. S.S. Sinha for Petitioner
Mr. A.Y. Sakhare, Senior Advocate a/w Ms. Pallavi Thakkar for
Respondent Nos. 1 and 2.
Mr. Chirag Shah a/w Ms. Kavita Dhanuka i/b. Mr. J.J. Shah for
Respondent Nos. 3 and 4.

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**CORAM : A.S. OKA &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 27th JUNE, 2017

P.C.:

1. Paragraphs 2 to 6 of the order dated 21st October, 2015
read thus:

“2. Heard the learned counsel for the petitioner and
the learned counsel for the respondent nos. 1 and 2 and
for the respondent nos. 3 and 4 respectively.

3. The learned counsel for the petitioner on
instructions states that in view of the notices dated 23rd
September, 2015 which are at Exh. “K”, “L” and “M” to
the petition issued under sub section (1) of section 53
of the Maharashtra Regional and Town Planning Act,
1966, the petitioner will apply for regularization in

terms of sub section (3) of section 53 of the said Act, 1966 within the period of one week from today. The petitioner has tendered his own undertaking affirmed today as well as joint undertaking of his sons Mr. Rajiv and Tarun Agarwal affirmed on the same day as his sons are looking after the property. The same are marked as "A1" and "A2" for identification respectively. We accept the said undertakings.

4. It will be open for the petitioner to make an application for regularization as stated above in the prescribed format through a licensed Architect within the period of two weeks from today.

5. If such application is made within two weeks from today, the same shall be decided within a maximum period of sixty days from the date on which the application is made.

6. The order passed on the application of the petitioner be to the petitioner or to the licensed architect of the petitioner. In view of the undertakings filed today, we direct that till the date of communication of the orders to the petitioner or to his licensed architect, whichever is earlier, no further action shall be taken by the Municipal Corporation on the basis of the impugned notices. If the order be adverse to the petitioner, said protection will continue for the period of fifteen days from the date of communication of the said order to the petitioner or to the licensed architect of the petitioner, whichever is earlier. For the time being we adjourn this petition to 23rd December, 2015 to be listed under the caption of "directions".

2. The Paragraph 3 of the undertaking (marked as A1) given by the petitioner reads thus:

"3. The Deponent hereby undertakes to this Hon'ble Court that he shall not permit any person or persons to use any

part or portion of the said property for the purpose of running a Hookah Parlour”

3. The 3rd respondent has filed an affidavit dated 19th November, 2015, which is tendered across the Bar, in which he has relied upon the photographs dated 17th September, 2015, 04th November, 2015 and 17th November, 2015 which are annexed to the said affidavit as Exhibit 'B' and 'C'. The photographs show that on 17th September, 2015, the said business of Hookah Parlour and Pool Club was being run. The photographs *prima-facie* show that, the business was being conducted in breach of the undertaking given to this Court. There is a reply filed by the constituted attorney of the Petitioner to the said affidavit of the 3rd respondent. Though the original reply is not in the file, a copy thereof is placed on record.

4. In Paragraph 3 of the affidavit of the 3rd respondent dated 19th November, 2015, specific reliance has been placed on the said photographs taken on 04th November, 2015 and 17th November, 2015. Paragraph 3 of the said affidavit reads thus:

“3. I say that the Petitioners, in violation of the said Undertaking have again started the said Hukkah Parlour and Pool Parlour activity illegally without any permission from the Hon'ble Court or MCGM. Hereto annexed and marked Exhibit C is the copy of the said Photos taken on 4th and 17th day of November, 2015. I say that I and my family members personally see so many people coming and going out from the said Hukka Parlour. I say that we are prevented from taking any photographs from inside of the said “Kayaan the Arabic Era”, from the security people.”

5. The above Paragraph 3 is dealt with in the reply of the

constituted attorney of the petitioner in Paragraph 7. The constituted attorney has not denied correctness of the photographs taken on 04th November, 2015 and 17th November, 2015.

6. Hence, *prima-facie*, we are of the view that the petitioner has committed a willful breach of the undertaking dated 21st October, 2015 (marked as 'A1' for identification) which was accepted by the Court by the order dated 21st October, 2015. Therefore, this is a fit case to issue a notice of civil contempt to the petitioner. The question of issuing contempt notice to the petitioner's sons who have also given undertakings marked as 'A2' will be considered after a reply is filed to the contempt notice by the petitioner.

7. The substantive challenge in this petition under article 226 of the Constitution of India was to the notices issued under sub section (1) of section 53 of the Maharashtra Regional and Town Planning Act, 1996 (for short 'the MRTP Act'). In terms of the order dated 21st October, 2015, the petitioner applied for regularization in accordance with sub section (3) of section 53 of the MRTP Act. As pointed out by way of Chamber Summons No.165 of 2016, the application for regularization made by the petitioner has been rejected. Obviously the application made by the petitioner for regularization would be governed by section 44 of the MRTP Act. Therefore, an efficacious remedy to prefer an appeal under section 47 of the said Act is available to petitioner. Therefore, amendment sought for incorporating a challenge to the order rejecting the application for regularization cannot be

granted.

8. The very fact that the petitioner availed of sub section (3) of section 53 of the MRTP Act shows that, the petitioner accepted that the work which is the subject matter of impugned notices is unauthorized. In the light of the above discussion, we pass the following order:

ORDER

(a) The Petition is rejected. However, rejection of this petition will not preclude the petitioner from challenging the rejection of application for regularization by preferring an appeal under section 47 of the MRTP Act. All contentions of the parties on merits in that behalf are kept open;

(b) Issue Notice of contempt to the writ petitioner under Rule 9(1) of the Contempt of Courts (Bombay High Court) Rules, 1994 for committing willful breach of clause 3 of the undertaking dated 21st October, 2015 (marked as 'A1' for identification), returnable on 08th August, 2017. If the notice is served, Suo Motu contempt be listed under the caption of 'fresh admission'

(c) In view of disposal of Writ Petition, Chamber Summons No. 165 of 2016 does not survive and same stands disposed of.

(SMT. VIBHA KANKANWADI, J)

(A.S. OKA, J)