

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

WRIT PETITION (L) NO. 3452 OF 2017

Noor Mohammad Shaikh ... Petitioner.
Versus
Municipal Corporation of
Greater Mumbai and others ... Respondents.

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Mr. Alankar Kirpekar i/b. Shantanu Chandratre for the Petitioner.
Ms. Sheetal Mane for MCGM.
Mr. Bhavin Gada a/w Ms. Payal Khona i/b. Harakhchand and Co. for
Respondent Nos. 4 and 5.

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

DATE : 07th December, 2017.

P.C. :

This is the fourth proceedings in which the petitioner has approached to this Court. This proceedings is an abuse of the process of the Court.

The petitioner had filed a writ petition bearing lodging no.3244/2017 challenging the order passed by the State Government under section 47 of the Maharashtra Regional and Town Planning Act, rejecting the application of the petitioner. After we dismissed the writ petition, the learned counsel for the petitioner, on instructions, from the petitioner who was present in the Court on the said date and whose presence was noticed by us stated that the petitioner would vacate the premise within two weeks and the Corporation may be restrained from taking any coercive steps till then. By accepting the statement made by the counsel for the petitioner, which we have recorded to be binding on the petitioner, we had restrained the Corporation from demolishing the

unauthorized construction for two weeks.

After the said order was passed, the petitioner again approached this Court with a review petition. The review petition was dismissed. Certain observations were made by the court while dismissing the review petition. A couple of days after the review petition was dismissed, the petitioner again approached the Court with a notice of motion in the disposed of writ petition. By the prayer in the said notice of motion, the petitioner had sought a stay to the order in the writ petition by three weeks. After observing that it was not possible to grant the prayer made in the notice of motion as the petitioner had undertaken to vacate the premises within two weeks, we had dismissed the notice of motion. Two days after the dismissal of the notice of motion, the present writ petition is filed for a direction to the Mumbai Municipal Corporation to regularise the illegal construction in pursuance of the letter dated 20.11.2017.

We are surprised that the petitioner has moved this Court for the fourth time in respect of the same matter pertaining to regularization. The petitioner had approached the Corporation for regularization of his structure and the application was rejected. After the application was rejected, the petitioner had filed an appeal before the State Government under Section 47 of the Maharashtra Regional and Town Planning Act. The order dismissing the appeal was challenged in writ petition (L) No.3244/2017. After dismissing the said writ petition the Court recorded a statement made on behalf of the petitioner that he would vacate the premises within two weeks. When the writ petition was argued, it was conveyed to this Court by Mr. Chawan, the counsel for the petitioner that the petitioner has again applied for regularisation and the acknowledgment of the

receipt, is dated 20.11.2017. Though we had not referred to the said fact in the order dismissing the writ petition filed by the petitioner, the said fact was pointed out to us. At that time, we had not referred to the said fact in our order dismissing the writ petition as it is well settled that a party cannot again approach the authority for the same relief that is earlier rejected by that authority and the appeal against it is also rejected. Since we were deciding about the correctness or otherwise of the order passed by the State Government in the appeal under section 47 of the Act, we had not specifically mentioned about the filing of an application by the petitioner before the Corporation again, more so, when it was not the prayer of the petitioner that the application made by the petitioner again, should have been decided by the Corporation. Even if the petitioner had made that prayer and had sought a direction against the Corporation to decide the second application for regularization, we would have refused to grant a *mandamus* against the Corporation, specially when the order passed by the Corporation refusing to regularise the construction was upheld by the State Government in an appeal and the order of the State Government was confirmed in the writ petition filed by the petitioner.

In the circumstances of the case, since the petitioner has vexed the Court time and again in respect of the same matter, we dismiss the writ petition with costs.

(Riyaz I. Chagla J)

(Smt.Vasanti A Naik, J)