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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2329 OF 2018

Arif Naushad Mojnidar

... Petitioner

Versus

The State of Maharashtra & Ors.

... Respondents

Mr. Rohan P. Surve, for the Petitioner.

Mrs. R.A. Salunkhe, AGP for Respondent Nos. 1 and 2.

Mr. Gautam J. Jain, for Respondent Nos. 8 & 9.

Mrs. Manisha Jagtap for Respondent Nos. 3 to 7.

**CORAM: A.S. OKA AND
 RIYAZ I. CHAGLA, JJ.
DATED: 6TH MARCH 2018.**

PC:-

1. Heard the learned counsel appearing for the Petitioner, the learned AGP appearing for the Respondent Nos. 1 and 2, the learned counsel for the Respondent Nos. 8 and 9 and the learned counsel for Respondent Nos. 3 to 7.

2. The Respondent Nos. 8 and 9 have tendered undertakings affirmed on 5th March 2018, which are taken on record and marked "U-1" and "U-2" respectively. The Respondent No.8 is claiming to be the owner of the land on which the illegal building subject matter of this Petition has been constructed. The Respondent No.9 is claiming to be the developer appointed by the Respondent No.8. Both have given undertakings stating that they

will not proceed with the construction work and that they will not dispose of any flats in the building or create any third party interests therein, unless the building is regularised. They have also given undertakings that in the event of rejection of the proposal for regularisation submitted by them to the Bhinwandi Nizampur Municipal Corporation, they will remove the entire construction carried out by them.

3. A snapshot of the concerned page on the website of the Municipal Corporation has been produced to show that the application for regularisation has been submitted and it is pending.

4. In view of the undertakings, the Petition need not be kept pending as both the Respondent Nos. 8 and 9 have accepted that the construction the subject matter of this Petition is completely illegal and that is why they have applied for regularisation.

5. Hence we pass the following order:-

(a) We accept the statement made by the Respondent Nos. 8 and 9 in their undertaking on oath that they have applied for regularisation of the subject construction. We direct the Municipal Corporation to decide the said application as expeditiously as possible and in any circumstances, within a period of sixty days from the date on which the application

for regularisation has been submitted;

(b) We accept the undertakings in the Affidavits of Respondent No.8 and 9 tendered today and which are taken on record and marked as Exhibit “U-1” and “U-2” respectively;

(c) The order passed on the regularisation application be communicated to the Architect appointed by Respondent Nos. 8 and 9. Till the date of communication of the order, the action of demolition shall not be taken in respect of the building / structure subject matter of this Petition;

(d) If before the disposal of application for regularisation, any further illegal construction is carried out, it will be open for the Municipal Corporation to demolish the same without any further notice to Respondent Nos. 8 and 9;

(e) If the application for regularisation is rejected, the action of demolition shall not be taken for a period of six weeks from the date on which the rejection is communicated to the Architect appointed by the Respondent Nos. 8 and 9. This protection is granted only with a view to enable both the Respondent Nos. 8 and 9 to comply with their undertakings to remove the illegal construction;

(g) If within the period of six weeks from the date on which the order of rejection is communicated to the Architect, the Respondent Nos. 8 and 9 fail to abide by their undertakings, the Municipal Corporation shall immediately proceed to demolish the building without any further notice to the Respondent Nos. 8 and 9.

(h) Needless to add that in such event, the officer in charge of the concerned local police station shall grant necessary police aid to the municipal staff;

(i) We make it clear that, we have not made any adjudication on the merits of the pending regularisation application;

(j) The Petition is disposed of in the above terms.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)