

Sharayu Khot.

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

WRIT PETITION NO. 4868 OF 2018

Mr. Shabbir Ahmad S. Khan

...Petitioner

Versus

Thane Municipal Corporation & Ors.

...Respondents

Ms. Jyoti Chavan, for the Petitioner.

Mr. R.A. Thorat, Senior Advocate, i/by Mr. Ajit Ram Pitale, for
the Respondent No. 1.

Mr. Sagar Anant Joshi, for the Respondent No. 2.

Mr. S.S. Deshmukh, for the Respondents No. 3 and 4.

**CORAM : ABHAY S. OKA AND
RIYAZ I. CHAGLA, JJ.**

DATE : 27 June 2018

ORDER :

1. Heard the learned Counsel appearing for the

Petitioner, the learned Counsel appearing for the 2nd Respondent and the learned Senior Counsel appearing for the 1st Respondent.

2. By this Petition under Article 226 of the Constitution of India, the challenge by the Petitioner in substance is to the notices/orders issued by the Municipal Corporation directing demolition of the subject structure. The Petitioner has tendered an undertaking dated 18th April 2018, which is already taken on record on 18th April 2018. The undertaking is marked as “U1” for identification. Clauses 1 and 2 of the said undertaking read thus:-

“1. *I undertake to file regularization Application with the Office of Respondent No. 1 within 5 weeks from today in respect of the suit structure in the above Writ Petition.*

2. *I undertake that in event of Respondent No. 1*

rejecting my regularization Application I shall within 4 weeks from the date of communication of the said order of rejection to me, remove the suit structure at my own cost.”

3. The learned Counsel appearing for the 2nd Respondent submits that the Petitioner has no right, title or interest in respect of the land on which the subject construction has been made. The learned Counsel has something to say about the documents annexed as *Exh.D* and *Exh.E* which are the copies of a Sale Deed and a Power of Attorney.

4. The 2nd Respondent is not disputing that the Petitioner is in possession of the structure in respect of which the Petitioner has given an undertaking to apply for regularization. From the fact that in the Petition itself, the Petitioner has stated that he wants to seek regularization shows that he has accepted that the structure has been constructed illegally without obtaining development permission. In view of

the undertakings, which are reproduced above, a limited protection deserves to be granted to the Petitioner. We accept the undertakings.

5. The Petition is disposed of by passing the following order:-

- (i) It will be open for the Petitioner to apply for regularization with the 1st Respondent-Thane Municipal Corporation within a period of five weeks from today;
- (ii) The Application shall be made in the prescribed form and by prescribed mode through the Petitioner's Architect;
- (iii) If such an Application is made within the stipulated period of five weeks, the 1st Respondent shall decide the same within a

period of 60 days from the date of filing of the Application and shall communicate the order passed thereon to the Petitioner's Architect;

(iv) Till the date of communication of the order to the Petitioner's Architect, the action of demolition shall not be taken by the 1st Respondent. If the Application is rejected, the action of demolition shall not be taken for a period of four weeks from the date of the order is communicated to the Petitioner's Architect;

(v) In the event of the failure of the Petitioner to comply with the undertaking in clause 2 which is reproduced above within the period of four weeks as mentioned in clause (iv) above, the 1st Respondent shall proceed to demolish the structure without any further notice to the Petitioner;

- (vi) On the failure of the Petitioner for apply for regularization within a period of five weeks from today, it will be open for the 1st Respondent to take action of demolition;
- (vii) The Petition is disposed of with the above directions.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]