

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5496 OF 2015

Smt. Hamida Kadar Solanki

... **Petitioner**

Versus

Jawahar Municipal Council and Ors.

... **Respondents**

Mr. N.R. Bubna for Petitioner.

Mr. A.P. Vaharse-AGP, for State.

Mr. A.P. Kulkarni for Respondent Nos. 1 to 3.

Mr. A.G. Damle Sr. Adv. i/b V.D. Desai for Respondent Nos. 6 and 7.

**CORAM : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATE : JUNE 06, 2018

P.C :-

1. Heard learned counsel for the respective parties. The Petition is filed seeking direction to the Respondent Nos. 1 to 5 to forthwith take action against illegal construction upon Plot Nos. 16, 17, 24 and 25, City Survey No. 257, Javhar, district Thane. On behalf of the Respondent No. 1 Mr. Vaibhav Vidhate has filed affidavit-in-reply. Paragraph 5 of the said affidavit reads thus:

“5. I therefore say and submit that at present it appears that the owners have enclosed the open parking as well as covered the

terrace on 3rd floor by construction of shed contrary to the sanctioned plan. If it is the case of the owner that the said open parking is being used as covered parking and the shed on 3rd floor is permissible, the said may not be acceptable. In my respectful submission the owner will have to file the revised plan for sanction under the provisions of MR & TP Act, Municipality Act, development control regulations; which will have to be considered on its own merits.”

2. The learned Counsel for the Respondent No.1, has submitted that the Respondent Nos. 6 and 7 have enclosed the open parking space and have also covered the terrace above third floor by constructing a shed, which is not in accordance with the sanctioned plan. The Counsel for Respondent No.1 also states that in the event, the Respondent Nos. 6 and 7 make an application/representation for regularization, the same will be considered in accordance with law.

3. Mr. Damle, learned Senior Counsel for the Respondent Nos. 6 and 7 states that the open parking is enclosed. He, however contends that the same is used only for parking and for no other purpose. He also states that, the Respondent Nos. 6 and 7 have enclosed the terrace on the third floor in order to protect it from animal and other miscreants. Shri. Bubna, the learned Counsel for the Petitioner contends that the Respondent Nos. 6

and 7 have carried out construction in the open parking space. The Respondent Nos. 6 and 7 have also enclosed the terrace above the third floor, which is the construction of sanction plan. Mr. Damle states that, the third floor terrace cannot be used for residence or any other purpose. He further states that, the Respondent Nos. 6 and 7 shall make an application/representation to the Respondent No. 2 for regularization and that they will abide by the decision of Municipal Council, subject to their right to appeal under Section 47 of the MR & TP Act. The statement is accepted.

4. In the light of above, we dispose of the Petition by passing following order.

i) The Respondent Nos. 6 and 7 are at liberty to apply to the Respondent Nos. 1 and 2 for regularization of the subject offending structures under Section 44 of the MR & TP Act.

ii) In the event such application is made by Respondent Nos. 6 & 7 within the period of four weeks from today, the Respondent Nos. 1 and 2 shall decide the same independently, on its own merit and in accordance with law as expeditiously as

possible and in any case, within a period of two months from the receipt of the application.

iii) In the event, representation/application for regularization of the subject offending construction is rejected by the Respondent Nos. 1 and 2 and the appeal is also dismissed then the Respondent Nos. 6 and 7 shall remove the subject offending structure, so as to comply with the building permission.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]