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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.6244 OF 2015**

Mrs. Ranjana Balu Jadhav	... Petitioner
Vs.	
The State of Maharashtra and Anr.	... Respondents

Mr. Omar Khaiyam Shaikh for the Petitioner.
Mr. Manish M. Pabale, AGP for the Respondent.

**CORAM : A.S. OKA &
RIYAZ I. CHAGLA, JJ.**

DATE : 20th MARCH, 2018

PC.

1 Heard the learned counsel appearing for the petitioner, the learned AGP for the first respondent and the learned counsel appearing for the second respondent. Considering the limited grievance in this Petition, we have taken up the Petition for final disposal at admission stage. The main grievance in this Petition under Article 226 of the Constitution of India is that notwithstanding the order dated 10th March, 2015 passed by the Municipal Commissioner of the second respondent directing the Additional Municipal Commissioner to hold an enquiry as regards alleged illegal demolition carried out by the second respondent of a shop held by the petitioner which is more particularly described in paragraph 2 of the Petition, no action has been taken.

2 There is an affidavit-in-reply filed by Shri Ganesh Arvind Shimpi, Assistant Engineer of the Ward Committee No.4 which is tendered across the bar. In paragraph 6 of the affidavit, it is stated that completion certificate a copy of which is annexed as Exhibit – D to the Petition is fabricated and manipulated. It is, therefore, submitted that the Petition deserves to be dismissed as the petitioner has relied upon a fabricated document.

3 The petitioner is relying upon a building permission (Exhibit – B), a sanctioned plan (Exhibit – C) and completion certificate (Exhibit – D).

4 Perusal of the order dated 10th March, 2015 passed by the Municipal Commissioner (Exhibit – A to the Petition) shows that the Municipal Commissioner directed Additional Commissioner of the second respondent - Municipal Corporation to hold an enquiry about the allegations made in the representation dated 20th May, 2015 by one Shri Mohan Wakode. A copy of the said representation is annexed as Exhibit – A to the Petition.

5 Had the Additional Commissioner held an enquiry, he could have gone into the question whether the permission, sanctioned plan

and completion certificate which are relied upon by the petitioner are genuine documents. The scope of enquiry as is clear from the order dated 10th March, 2015 is whether demolition of the shop of the petitioner was lawful.

6 In writ jurisdiction, we cannot decide whether completion certificate at Exhibit – D is a manipulated and fabricated document. Therefore, Additional Commissioner will have to hold enquiry in terms of the order dated 10th March, 2015.

7 We may note here that the petitioner is relying upon representation dated 20th February, 2015 made by one Shri Mohan Wakode on behalf of a political party. The said representation is addressed to the Municipal Commissioner in which the said Shri Mohan Wakode has given a threat to go on fast. In fact the order dated 10th March, 2015 refers to the said threat given by Shri Mohan Wakode. The learned counsel appearing for the petitioner stated that the petitioner has not made the said representation. Had the petitioner made such a representation containing such a threat, we would not have entertained this Petition under Article 226 of the Constitution of India at the instance of the petitioner as the threat is completely illegal. Hence, we dispose of the Petition by passing the following order :-

ORDER

- (i) We direct the Municipal Commissioner of the second respondent to ensure that Additional Municipal Commissioner holds an enquiry in terms of the order dated 10th March, 2015 (Exhibit – A to the Petition) and completes the enquiry as expeditiously as possible and in any event within a period of three months from today;
- (ii) We direct the second respondent to provide a copy of enquiry report submitted by the Additional Commissioner to the petitioner;
- (iii) After receiving the report, the petitioner is free to adopt legal remedy on the basis of said report;
- (iv) We make it clear that we have made no adjudication on the merits of the controversy and especially the controversy whether document at Exhibit-D is genuine. All this will have to be left to be decided by the Additional Commissioner while holding an enquiry.

(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)