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

WRIT PETITION NO. 11210 OF 2016

Smt. Mehmooda Faiyyaz Ansari

...Petitioner.

VS

Bhiwandi Nizampur City Municipal
Corporation & Ors.

...Respondents

.....

Mr Raju D. Suryavanshi a/w Suraj N. Naik for the Petitioner.

Mr N.R.Bubna for Respondent Nos.1 and 2.

Mr Sachin Hande i/b Mr Samadhan A. Kashid for Respondent
No.3.

Mr Manish M Pabale AGP for Respondent No.5.

Mr Mohammed Harun Abdul Gani Ansari, Respondent No.3 is
present in the Court.

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**CORAM : A.S.OKA &
RIYAZ I. CHAGLA, JJ.
MARCH 14, 2018.**

P.C. :

The submissions were heard Yesterday.

2 By this Writ Petition under Article 226 of the
Constitution of India, the grievance made by the Petitioner is as
regards the failure of the first Respondent - Municipal
Corporation to take action of demolition of a ground plus two
storied building, which has been illegally constructed. The
Petitioner has filed an undertaking dated 12th March, 2018. We

accept the said undertaking.

3 An affidavit-cum-undertaking has been filed by the third Respondent, who is the owner of the subject property on which the building in dispute has been constructed. In paragraphs 6 and 7 of the said affidavit of third Respondent dated 13th March, 2018, he has stated thus:

“(6) I say that I undertake I will file Application for regularization in prescribed format before the Respondent No.1 i.e. Municipal Corporation within a period of Four weeks from today. I further undertake that if the regularization Application rejected then I will vacate and demolish the portion of building which is not regularized by the Corporation in view of the order passed by this Hon'ble Court.

(7) I further undertake that I will not create any third party interest in the respect of the newly constructed of premises or any charges on the said property.”

4 Thus, the third Respondent, who is the owner of the building, has accepted the same to be illegal and has stated that he will apply for regularization.

5 In the light of the undertaking of the third

Respondent, now the Petition need not be kept pending and the same is disposed of by passing the following order.

O R D E R

- (i) We accept the undertaking of the Petitioner in her affidavit dated 12th March, 2018. We accept the undertaking of the third Respondent dated 13th March, 2018;
- (ii) In view of the undertaking of the third Respondent, it will be open for the third Respondent to apply for regularization of the subject structure to the first Respondent within a period of four weeks from today. The application shall be in the prescribed format and in accordance with the relevant rules;
- (iii) The application shall be decided by the first Respondent as expeditiously as possible and in any event, within 60 days from the date of filing of the application;
- (iv) The order passed on the said application shall be communicated to the third Respondent. If the application is rejected or is partly allowed, the

action of demolition shall not be taken for six weeks from the date of communication of the said order to enable the third Respondent to comply with his undertaking;

(v) We make it clear that on the failure of the third Respondent to apply for regularization within four weeks from today, the Municipal Corporation shall proceed to take action of demolition without any further notice to the third Respondent;

(vi) If the application for regularization is rejected or is sanctioned only in respect of a part of the said building, in terms of the undertaking given by the third Respondent, he shall vacate and demolish the entire building or a part thereof, as the case may be, within a period of six weeks from the date of communication of the order as aforesaid. If the third Respondent fails to do so within the stipulated time, the first Respondent shall proceed to take action of demolition in respect of that part of the building, which is not regularized.

We make it clear that the action shall be taken without further notice to the third Respondent;

- (vii) If such action is required to be taken, the local police shall provide adequate police protection to the officers of the first Respondent by providing police party consisting of male and female personnel including armed constables;
- (viii) The Writ Petition is disposed of in the aforesaid terms.

(RIYAZ I. CHAGLA J.)

(A.S.OKA, J.)