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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10747 OF 2017**

Mr. Sudhir Prahlad Barge	... Petitioner
Vs.	
State of Maharashtra and Ors.	... Respondents

Mr. Sandeep Mishra i/by Mr. Prakash Mishra for the Petitioner.
Mr. R.A. Salunkhe, AGP for the Respondent No.1.
Mr. Jagdish G. Reddy (Aradwad) for the Respondent Nos.2 to 4.
Mr. G.S. Godbole and S.R.Singh and Mrs. Sarbar Chatterjee i/by S.R.
Singh & Co. for Respondent No.5.

**CORAM : A.S. OKA &
P.N. DESHMUKH, JJ.**

DATE : 22nd FEBRUARY, 2018

PC.

1 Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the fifth respondent and the learned counsel appearing for the second to fourth respondents. The fifth respondent has tendered across the Bar an affidavit-cum-undertaking affirmed today. It is taken on record and marked 'U-1' for identification. It records that he has submitted an application for regularisation to the second respondent – Municipal Corporation on 12th January, 2018, a copy of which has been annexed to the affidavit-in-reply of the said respondent. He has stated that there is a further application made on

12th February, 2018 to the Assistant Director of Town Planning of the second respondent – Municipal Corporation. A copy of the said application has been annexed as Exhibit – IX to the reply. In paragraph 5 of the undertaking, the Respondent No.5 has stated thus :-

“5. I say that in case the Planning Authority declines to regularize the construction and declines permission to me to retain the said construction; after service of such an order on me, within 4 weeks of service of such order and subject to my right to file statutory Appeal u/s 47 of M.R.T.P. Act, 1966 and apply for suitable interim orders in such an Appeal and without prejudice to apply for and obtain such interim reliefs, in the event of failing to get such interim relief, I hereby undertake to remove the construction entirely at my own cost and expenses within a period of 4 weeks of service of an order adverse to me.”

2 Exhibit – VIII to the affidavit in reply shows that the application dated 12th January, 2018 for regularisation has been disposed of. Thereafter, the second application has been filed on 12th February, 2018 with the Assistant Director of Town Planning of the second respondent. It appears that the said application has been made under Sub-Section (1) of Section 52A of the Maharashtra Regional and Town Planning Act, 1966 read with the Maharashtra Town Planning (Compounded Structures) Rules, 2017. The application proceeds on the footing that the structure subject matter of the impugned notice and the impugned order is a compounded structure within the meaning of the said Act of 1966.

3 The application dated 12th February, 2018 made by the Respondent No.5 proceeds on the footing that the structure subject matter of the impugned order is illegal and that is how the Respondent No.5 wants the structure to be declared as a compounded structure.

4 In view of the undertakings contained in paragraph 5 and in view of the fact that the Respondent No.5 has accepted the correctness of the impugned notice and the impugned order, this Petition need not be kept pending and the same is disposed of by passing the following order :-

ORDER

- (i) We direct the second respondent to decide the application dated 12th February, 2018 (a copy of which has been annexed as Exhibit – IX to the reply of the Respondent No.5) as expeditiously as possible and in any event within a period of two months from today. The order passed on the said application shall be communicated to the architect appointed by the Respondent No.5 through whom the said application dated 12th February, 2018 has been made;
- (ii) In view of the pendency of the application dated 12th February, 2018 action of demolition on the basis of the

impugned notice and the impugned order shall not be taken till the date of communication of the order passed on the said application to the Respondent No.5's architect. If the said order be adverse to the petitioner action of demolition shall not be taken on the basis of the impugned notice and the impugned order for a period of four weeks from the date on which the order is served to the Respondent No.5's architect;

- (iii) If any Appeal is preferred against such order by the Respondent No.5, the same shall be disposed of by the State Government as expeditiously as possible;
- (iv) Undertaking of the Respondent No.5 in paragraph 5 of the affidavit (marked as "U-1" for identification) is accepted;
- (v) On failure of the Respondent No.5 to abide by the undertaking, without prejudice to the other remedies available, the second respondent shall take immediate action of demolition on the basis of the order dated 14th October, 2015 without issuing any further notice to the Respondent No.5;

(vi) We make it clear that we have made no adjudication on the merits of the application dated 12th February, 2018 made by the Respondent No.5 and all questions in that behalf are left open to be decided by the Planning Authority;

(vii) Petition is disposed of on above terms.

(PN. DESHMUKH, J)

(A.S. OKA, J)