

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13979 OF 2017**

Bilal Salahuddin Shaikh

..Petitioner

vs.

Bhiwandi Nizampur City Municipal Corporation
through the Commissioner and Ors.

...Respondents

Mr.Jagdish G. Reddy (Aradwad) for the Petitioner.

Mr.Drupad S. Patil a/w. Mr. Gautam J. Jain for the Respondent Nos.3 and 4.

**CORAM : A.S. OKA & P. N. DESHMUKH, JJ.
DATE : 23rd FEBRUARY, 2018**

P.C.:

. Heard the learned counsel for the Petitioner and the learned counsel for the Respondent Nos.3 and 4. Private notice has been duly served on the Respondent Nos.1 and 2 as stated in the office remarks.

2. By way of this petition under Article 226 of the Constitution of India, the Petitioner is seeking a writ of mandamus directing the Respondent Nos.1 and 2 to initiate action of demolition in respect of illegal construction carried out by the Respondent Nos.3 and 4. Our attention is invited to the documents annexed to the petition including the report submitted by the Designated Officer from time to time. Exh. C is the notice dated 5th December 2016 addressed by the Respondent No.1-Corporation to the Respondent Nos.3 and 4 stating that illegal RCC construction has been carried out by them. There are further reports on record which shows that an offence under section 52 of the Maharashtra Regional and Town Planning Act, 1966 was registered against the Respondent Nos.3 and 4.

3. Today, the Respondent Nos. 3 and 4 have tendered across the

bar their affidavits containing identical statements. The affidavits record that on 29th January 2018 the said Respondents have submitted an application for regularization to the Respondent No.1 through their Architect. A copy of the application as well as online status containing registration ID of the application are annexed to the affidavits. Both the applicants have filed undertakings not to proceed with the further construction and to remove the construction carried out within a period of 6 weeks from the date of rejection of the application for regularization, if the same is rejected.

4. Thus, the Respondent Nos.3 and 4 have accepted that the said construction is illegal and that is why they have applied for grant of building permission/regularization.

5. In view of the undertakings, it is not necessary to issue a writ of mandamus to the Respondent Nos.1 and 2 as prayed for. Writ Petition is disposed of by passing the following order:

ORDER

- i) The undertaking of the Respondents Nos.3 and 4 are marked as U-1 and U-2 respectively for identification. The undertakings contained in paragraphs 2 and 4 are accepted;
- ii) In view of the undertakings as above, we direct the Respondent No.1 to decide the application dated 29th January 2018 as expeditiously as possible and in any event within a period of 60 days from the date on which the application is submitted. The decision taken on the said application shall be communicated to the Architect of the Respondent Nos.3 and 4, who has submitted the application;
- iii) Till the date of communication of the decision on the application for regularization, action of demolition shall not be

taken in respect of the subject structure by the Respondent No.1. If application for regularization is rejected, the action of demolition shall not be taken by the Municipal Corporation for a period of 6 weeks from the date of communication to their Architect to enable the Respondent Nos.3 and 4 to comply with their undertakings;

iv) We make it clear that on the failure of the Respondent Nos.3 and 4 to comply with the undertakings, the Respondent Nos.1 and 2 shall take action of demolition of the structures subject matter of the petition without issuing any further notice to the Respondent Nos.3 and 4;

v) We make it clear that we had made no adjudication on merits of the application for regularization made by the Respondent Nos.3 and 4, which shall be decided in accordance with law;

vi) We direct the Petitioner to serve an authenticated copy of this order in the office of the Respondent Nos.1 and 2 within a period of 10 days from the date on which this order is uploaded;

vi) The petition is disposed of on the above terms.

(P.N. DESHMUKH, J)

(A.S. OKA, J.)