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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION (L) No. 68 OF 2018
IN
WRIT PETITION No. 1966 OF 2017

Sanjay Padmakar Patil ... Petitioner
Vs.
Municipal Corporation for Gr. Mumbai & Anr. ... Respondents

Mr. Amit A. Gharte, for the Petitioner.

Ms. Kejali H. Mastakar, for the Respondent - BMC.

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

DATE : JANUARY 24, 2018

PC :

1. Heard the learned counsel for the Applicant and the learned counsel for the Respondent BMC. Writ Petition (L)) No. 1628 of 2017 filed by the Applicant was disposed by order dated 6th July, 2017. The operative part of the said order reads thus:

“(i) The undertaking dated 5th July 2017 (marked as `X-1') is hereby accepted;

- (ii) It will be open for the petitioner to apply to the concerned Authority of the Mumbai Municipal Corporation for regularization of the said structure within a period of six weeks from today. The application shall be made through a licenced Architect in a prescribed format. If such application is made within a period of six weeks from today, the first respondent-Corporation shall decide the same within a maximum period of 60 days from the date of filing the same;
- (iii) The order passed on the application for regularization shall be communicated to the petitioner or to his licenced Architect;
- (iv) Ad-interim relief granted by this Court on 23rd June 2017 will continue to operate till the date of communication of the order which may be passed by the first respondent-Corporation to the petitioner or to his licenced Architect, whichever is earlier;
- (v) If the order passed on the application for regularization be adverse to the petitioner, the said protection will continue to operate for a period of six weeks from the date on which the order is communicated to the petitioner;
- (vi) If the application for regularization is rejected and the petitioner fails to demolish the said structure within a period of six weeks from the of communication of the order to the petitioner, the amount of Rs.1,00,000/- deposited in this Court shall stand forfeited and the said amount with interest accrued thereon, if any, will be paid over to the Municipal Corporation;
- (vii) In the event of the failure of the petitioner to apply for regularization within a period of six weeks from today, the Mumbai Municipal Corporation shall proceed with the action of demolition of the subject structure without issuing any further notice to the petitioner;

(viii) Even in the event of the failure of the petitioner to apply for regularization within a period of six weeks from today, the amount of Rs.1,00,000/- deposited by the petitioner in this Court with interest accrued, if any, shall stand forfeited which shall be paid over to the Mumbai Municipal Corporation;

(ix) In the event, the proposal for regularization is sanctioned or the petitioner removes the entire illegal structures at his own costs within a period of six weeks from the date of communication of the order of rejection of his application to the petitioner or his licenced Architect whichever is earlier, it will be open for the petitioner to withdraw the amount of Rs.1,00,000/- with interest accrued thereon to the Registrar (Original Side);

(x) The writ petition is disposed of on above terms;

(xi) All concerned to act upon an authenticated copy of this order.”

2. Under the order dated 6th July, 2017 undertaking of the Applicant was recorded to apply for regularisation of the subject structure within a period of six weeks and to bring the same to its original condition. If the order passed on the application for regularisation is adverse to the Petitioner, the interim protection was directed to be operative for a period of six weeks from the date of communication of said order passed by the Planning Authority The affidavit in support of this notice of motion shows that for various

reasons, the Applicant could not apply for regularisation within the time specified in the undertaking.

3. Yesterday, in presence of the Petitioner, the learned counsel for the Petitioner has tendered undertaking of the Petitioner which was affirmed yesterday. It is taken on record and marked “U1” for identification. By the said undertaking, the Applicant has undertaken to demolish the structure mentioned in paragraph 1 and to bring it to its original condition within a period of two months from 23rd January, 2018. We accept the said undertaking. In view of the said undertaking and in view of the fact that now the Applicant does not wish to apply for regularisation, by modifying the order dated 6th July, 2017 the Petitioner will have to be permitted to withdraw the sum of Rs.1,00,000/-, provided he complies with the undertaking tendered yesterday and marked “U-1” for identification. Therefore, we dispose of the notice of motion by passing the following order:

- (i) The undertaking given by the Petitioner is taken on record and marked “U-1” is accepted;
- (ii) We direct the Designated Officer or any officer nominated

by him to visit the site of the subject structure on 26th March, 2018 with a view to ascertain whether the Applicant has complied with the undertaking as aforesaid. The Designated Officer or the officer nominated by him shall submit a report to this Court alongwith an affidavit on or before on before 2nd of April, 2018;

- (iii) If the Court finds that the Applicant has complied with the aforesaid undertaking, permission will be granted to the Applicant to withdraw the sum of Rs. 1,00,000/- deposited in this Court together with interest, if any, accrued thereon;
- (iv) Needless to add that on the failure of the Applicant to comply with the undertaking within two months from 23rd January, 2018, the amount of Rs. 1,00,000/- with interest, if any, accrued thereon shall be paid over to the Municipal Corporation;
- (v) Notice of motion is disposed of in the aforesaid terms;
- (vi) For considering compliance, place the motion under the caption of “directions” on 4th April, 2016;

(vii) In view of the aforesaid undertaking, action of demolition shall not be taken by the Municipal Corporation for a period of two months from 23rd January, 2018. Needless to add that if the undertaking is complied with, action of demolition shall not be taken in respect of the original structure only on the basis of the notice impugned in the main petition.

Sd/-
[P. N. DESHMUKH, J.]

Sd/-
[A. S. OKA, J.]

Vinayak Halemath