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

WRIT PETITION (L) No. 520 OF 2018
WITH
WRIT PETITION (L) No. 267 OF 2018

Shreedharan R. Thaliya Parampil ... Petitioner
Vs.
Municipal Corporation of Gr. Mumbai & Ors. ... Respondents

Ms. Sanjukta Dey, for the Petitioner in both petitions.

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

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

DATE : FEBRUARY 21, 2018

PC :

1. Writ Petition (L) No. 267 of 2018 has been preferred by the Petitioner challenging the notice dated 18th December, 2013 issued under Section 351 of the Mumbai Municipal Corporation Act, 1888 and the order dated 22nd July, 2015 passed on the basis of the said notice directing demolition of the structures / work subject matter of the said notice. In Writ Petition (L) No. 520 of 2018, there is a challenge to the consequential notice dated 10th February, 2018 issued

by the Municipal Corporation on the basis of the aforesaid notice and order which are subject matter of challenge in the first petition.

2. In these two petitions, a common affidavit / undertaking is filed by the Petitioner which is dated 20th February, 2018 and which is tendered across the bar. It is taken on record and marked “X” for identification. In the said affidavit, the Petitioner has stated that he will apply for regularisation of the offending structure situated on CTS No. 312 described in show-cause notice dated 18th December, 2013. In paragraph 3 of the said affidavit, the Petitioner has given undertaking that in case the regularisation application is rejected and the appeal preferred against the said order is dismissed, he will remove the structures and the entire work subject matter of the notice dated 18th December, 2013.

3. We accept the statement and undertakings of the Petitioner under the said affidavit. Thus, the Petitioner has accepted that the structure / work subject matter of the impugned notice and the impugned order 22nd July, 2015 is illegal and unauthorised. Therefore, the challenge to the impugned notice and the impugned order will not survive. Hence, we dispose of both the petitions by passing the

following order:

- (i) It will be open for the Petitioner to make an application for regularisation of the subject structure / work by online mode through a licensed architect within a period of sixty days from today;
- (ii) The application for regularisation shall be decided within 60 days from the date of filing such application. The order passed on the regularisation application shall be communicated to the architect of the Petitioner.
- (iii) In case application for regularisation is filed within 60 days from today, till the date of communication of the order passed on the regularisation application to the Petitioner's architect, no action shall be taken on the basis of the impugned notice and the impugned order.
- (iv) If the said order be adverse to the Petitioner, action of demolition shall not be taken for a period of one month from the date of service of the said order on the Petitioner's architect to enable the Petitioner to file an

appeal under Section 47 of the Maharashtra Regional & Town Planning Act, 1966;

- (v) If the said appeal is dismissed, the Petitioner shall remove the structure / work within a period of one month from the date on which copy of order in appeal is served on him. If the Petitioner fails to take the action as assured in the undertaking within a period of one month, as aforesaid, it will be open for the Municipal Corporation to implement the impugned notice and the impugned order without any further notice to the Petitioner;
- (vi) All contentions of the Petitioner on the application for regularisation to be made by him are kept open;

[P. N. DESHMUKH, J.]

[A. S. OKA, J.]

Vinayak Halemth