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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2077 OF 2017**

B. Shivram Shetty

... Petitioner

Vs.

Municipal Corporation of Greater Mumbai and Ors.

... Respondents

Mr. S.P. Kanuga for the Petitioner.

Ms. Pallavi Thakar for the Respondent – BMC.

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

DATE : 4th MAY, 2018

PC.

1 Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents. The challenge in this writ petition under Article 226 of the Constitution of India is to the notice dated 4th January 2017. The issue under Section 354A of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act”) and the order passed on 25th January 2017 on the basis of the said notice holding the construction of shed as illegal. The learned counsel appearing for the petitioner on instructions states that the petitioner will apply for regularisation of the structure subject matter of the notice and the order by relying upon various policies in force. We accept the

said statement. As the petitioner has agreed to apply for regularisation, it is obvious that the petitioner has accepted that the shed subject matter of impugned notice and order has been unauthorisedly constructed without obtaining permission.

2 Considering the nature of the subject structure, limited protection deserves to be granted to the petitioner. Accordingly, we pass the following order :-

ORDER

- (i) It will be open for the petitioner to make an application for regularisation in the prescribed form and by prescribed mode through an architect within a period of 8 weeks from today;
- (ii) If such an application is made within the stipulated time, the first respondent shall decide the same within a maximum period of 60 days from the date of filing the application for regularisation. The order passed on the said application be communicated to the petitioner's architect. Till the date of communication of the order to the petitioner's architect, no action shall be taken by the respondents on the basis of the impugned notice and impugned order. If the said order be adverse to the

petitioner, such action shall not be taken for a period of four weeks from the date on which the order is served to the petitioner's architect;

- (iii) We have made no adjudication on the merits of the application proposed to be made by the petitioner;
- (iv) On the failure of the petitioner to file the application for regularisation within the stipulated period of 8 weeks from today, it will be open for the respondents to take action on the basis of the impugned notice and impugned order;
- (v) Petition is disposed of on above terms.

(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)