

pmw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2315 OF 2016**

Dariyalal Co-operative Housing Society Limited ... Petitioner
Vs.
Municipal Corporation of Greater Mumbai and Ors. ... Respondents

Mr. M.M. Vashi, Senior Counsel a/w Ms. Prachi Khandge i/by M.P. Vashi Associates for the Petitioner.
Ms. Pallavi Thakar for the Respondent – BMC.
Mr. Satish Upadhyay i/by Mr. A.M. Saraogi for the Respondent No.4.

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

DATE : 16th JANUARY, 2018

PC.

1 Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first and third respondents. The learned counsel appearing for the fourth respondent states that though the fourth respondent has filed an affidavit in reply, he is not in contact with the Advocate on record and therefore, time may be granted.

2 Considering the limited controversy involved, we need not keep the Petition pending. The grievance in this Petition under Article 226 of the Constitution of India by the petitioner – society is about the

alleged illegal construction carried out by the fourth respondent in respect of a bungalow being bungalow No.3. The details of the alleged illegal construction carried out by the fourth respondent have been set out in the petition. The substantive prayer in the Petition is for seeking a writ of mandamus against the Municipal Corporation and its officers to take action of demolition.

3 There is a reply filed by the fourth respondent in which he has relied upon a suit filed by him in the City Civil Court. Though the number of the suit and the order, if any, passed in the suit have not been disclosed, a copy of the plaint has been annexed. Averments made in the plaint show that a notice under Section 354A of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act”) has been issued on 17th July, 2014. There is an order passed thereon on 20th May, 2016. From the averments made in the plaint it appears that there is an order of demolition passed in respect of illegal construction. In prayer clause (a) of the plaint, there is a specific challenge to the said notice and order. It appears that there is also a notice issued by the Municipal Corporation under Section 351 of the said Act of 1888. The annexures to the plaint show that even application for regularisation made by the fourth respondent has not been considered by the Municipal Corporation on the ground of non-compliance.

4 The reply of the third respondent also discloses that after filing Writ Petition (St) No.15010 of 2016 in this Court for challenging action of the first respondent – Municipal Corporation, a civil suit is filed by the fourth respondent. In paragraph 6 it is specifically stated that now the City Civil Court is seized of the matter.

5 According to the case of the learned counsel appearing for the petitioner, there is no ad-interim relief granted in the suit. The learned counsel appearing for the first to third respondents as well as the learned counsel appearing for the fourth respondent have no instructions on this aspect.

6 As the first respondent has taken action under Sections 351 and 354A of the said Act of 1888, now this Petition need not be kept pending and the same is disposed of by passing the following order :-

ORDER

- (i) If there is no prohibitory order passed by the City Civil Court in the suit filed by the fourth respondent, immediate steps shall be taken by the first to third respondents to act upon and implement notices dated 17th July, 2014 and 6th August, 2014 as well as order

dated 20th May, 2016 which are subject matter of challenge in the suit filed by the fourth respondent;

- (ii) In such a case, action for implementation of the aforesaid notices and orders shall be taken within a period of one month from the date on which this judgment and order is uploaded. If the officers of the Municipal Corporation need police protection, the officer in-charge of the concerned Police Station shall grant police protection to the officers of the Municipal Corporation on their application for facilitating demolition;
- (iii) If there is any prohibitory order of the City Civil Court or any other Court which prevents the first to third respondents from acting upon the notices and orders, immediate action as aforesaid shall be taken within a period of one month from the date on which the prohibitory orders, if any, are vacated;
- (iv) The concerned designated officer of the concerned ward shall keep the petitioner informed about the action taken on the basis of this order;

- (v) We make it clear that we have made no adjudication on the merits of the pending suit;
- (vi) The Petition is disposed of in above terms;
- (vii) All concerned to act upon an authenticated copy of this order.

(PN. DESHMUKH, J)

(A.S. OKA, J)