

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

WRIT PETITION NO. 1477 OF 2008

Virsen kamlakar sao. ... Petitioner.
V/s.
The Executive Engineer, Maharashtra Housing
and Area Development Board and others. ... Respondents.

Mr.Kuldip T. Pawar for the petitioner.

Ms.K.H.Mastakar for the respondent- MMC.

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

DATE : 12th February 2018.

P.C.:

Heard the learned counsel for the parties. This petition was kept today on the prayer made by the learned counsel appearing for the petitioner to enable him to take instructions. The grievance in this petition under Article 226 of the Constitution of India is about the failure of the second respondent- Municipal Corporation to demolish construction made by the tenants in the petitioner's building known as Mehta Chawl bearing No.7,7A,7B. There is a reply filed to the petition by Shri Dilip Dattatraya Gupte, Sub-Engineer (B & F) of the said Municipal Corporation. Clauses (b) and (c) of the paragraph-4 of the said reply read thus:

“b. I say that thereafter notices under section 351 of the MMC Act dated 6.1.2004 were issued by these Respondents to the occupants of Room No.19, 20, 21, 22, 23, 24 & 25 of Building No.7A and occupants of Room No.13, 14, 15, 16 & 17 of Building No.7B for unauthorized construction of mezzanine floor with ladi coba ladi with different dimensions as mentioned in the notices. I say that thereafter the occupants replied to the said notice under section 351 of the MMC Act. The Assistant Commissioner `F' Ward after considering the reply, passed the order dated 3.3.2004, thereby directing the occupants to remove the unauthorized work within 15 days, failing which demolition action would be taken by these Respondents. One of the copies of the 351 notice issued to Shri Iftekar Ahmed, Building No.7B, Room No.17 is hereto annexed and marked as Exhibit-1. The copy of the order dated 3.3.2004 passed by the Assistant Commissioner `F' Ward is hereto annexed and marked as Exhibit-2.

c. I say that thereafter notices under section 488 of the MMC Act was also issued by these Respondents and after obtaining necessary assistance from the Agripada Police Station, the unauthorized vertical extensions of 12 Rooms were demolished by these Respondents on 2.2.2005. Hereto annexed and marked Exhibit-3 is the copy of the notice under section 488 of the MMC Act and Exhibit-4 is the copy of the demolition report.”

2. A copy of notice dated 6th January 2004 issued under section 351 of the Mumbai Municipal Corporation Act, 1888 as well as order passed thereon on 3rd March 2004 are annexed to the reply. Though this affidavit is filed way back on 12th March 2009, there is no rejoinder filed disputing the contents thereof. Today, the learned counsel appearing for the petitioner tendered across the bar copies of replies given by various

occupants to the notices issued in the year 2014-15. If the grievance of the petitioner is that on the basis of the said notice no action is taken, that will be an independent cause of action for which the petitioner can always make a representation to the Municipal authorities. If the Municipal authorities fail to take any action, the petitioner can always file a fresh petition.

3. Subject to the liberty granted as aforesaid, by accepting the statements made in the affidavit of Shri Dilip Dattatraya Gupte, this petition is disposed of. Rule is discharged.

(PN.DESHMUKH, J.)

(A.S.OKA, J.)