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

WRIT PETITION (L) NO. 1374 OF 2018

Bharat S/o. Muddanna Shetty ... Petitioner
Versus
The State of Maharashtra & Anr. ... Respondents

Mr. Sushil Upadhyay, i/b Mr. A.M. Saraogi, for the Petitioner.
Mr. Sukanta Karmakar, AGP for Respondent – State.
Ms. Shital Mane, for Respondent – BMC.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATE: 27TH APRIL 2018.

PC:-

1. Not on board. Taken on board.
2. Heard the learned counsel appearing for the Petitioner, the learned counsel appearing for the Respondent No.2 and the learned AGP for the Respondent No.1. The undertaking of the Petitioner dated 25th April, 2018 is taken on record. The undertaking records that the Petitioner wants to apply for regularisation of the work subject matter of impugned notice dated 2nd February, 2018 issued by the Respondent No.2 under Sub section 1 of Section 53 of the Maharashtra Regional and Town Planning Act, 1966 (for short “MRTP Act”). The Petitioner has given undertaking that in the event application for regularisation

made by him is rejected and an appeal preferred against the said order under Section 47 of the MRTP Act is rejected, he will act in terms of the impugned notice and will restore the flats to its original condition. The undertaking given, as stated in paragraph 4, is an unconditional undertaking.

3. Only in the light of the undertaking and in view of provisions of Sub Section 3 of Section 53 of the MRTP Act, we propose to grant limited protection to the Petitioner. The fact that the Petitioner has agreed to apply for regularisation shows that he has accepted that work subject matter of the impugned notice is illegal. Hence, we pass following order:-

a) It will be open for the Petitioner to apply for regularisation of the work subject matter of the impugned notice within a period of 12 weeks from today. The application shall be made in prescribed form and by prescribed mode through an Architect;

b) If such application is made within the stipulated time, the same shall be decided within maximum period of 60 days from the date of filling of the application. The order passed on the application be communicated to the Petitioner's Architect;

c) Till the date of communication of the order to the Petitioner's Architect, no action shall be taken for implementation of the impugned notice. After application for regularisation is rejected, the limited protection will continue to operate for a period of one month from the date on which order is communicated to the Petitioner's Architect;

d) If the Petitioner prefers appeal against rejection of application for regularisation within a period of one month from the date of service of the order on the application to his Architect, the limited protection will continue to operate till the disposal of the appeal and for a period of three weeks from the date on which order passed in appeal is communicated to the Petitioner;

e) In the event of failure of the Petitioner to prefer an Appeal within a period of one month from the date of communication of the order of rejection of the regularisation application to his Architect or in the event of the failure of the Petitioner to remove the work within a period of three weeks from the date of communication of the adverse order of the Appellate Authority, the Respondent No.2 is free to act upon the impugned notice and take necessary action;

f) We have made no adjudication on merits of the application for regularisation;

g) All contentions thereof are kept open.

h) The Petition is disposed of on above terms.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)