

VPH

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

WRIT PETITION No. 3084 OF 2014

Dr. (Mrs.) Aruna Prakash Bora ... Petitioner
Vs.
The Municipal Corporation of Gr. Mumbai ... Respondent

Ms. Pranjali Bhandari, for the Petitioner.
Mrs. Shabana Sothe, for the Respondent – BMC.
Mr. S. P. Thorat, for the Respondent No. 9.

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

DATE : JANUARY 15, 2018

PC :

1. Heard the learned counsel appearing for the Petitioner and the learned counsel appearing for the Municipal Corporation. Perused the affidavit in reply filed by Ashok S. Wakade, Assist. Engineer (Building Proposal, Eastern Sub-urban) of the Mumbai Municipal Corporation. In paragraph 4 of the said reply it is stated that the Municipal Corporation has served a notice under sub-section (1) of Section 53 of the Maharashtra Regional and Town Planning Act,

1966 (for short “the MRTP Act”). The said notice alleges illegal additions, alterations to ground floor (part) + stilt (part) + 1st to 7th floor of “A” and “B” Wing of the subject buildings. In paragraph 6 of the affidavit, it is stated that Respondent No. 6 Society through their Architect and Builder applied for redevelopment of the building and thereafter plans were sanctioned and amended from time to time. It is further stated that the proposal for grant of occupation certificate is under process. It could not be approved as there was a change of user on the ground floor without obtaining permission. It is stated that there are variations in the construction of the building and that is why a notice under Section 53(1) of the MRTP Act has been issued. Paragraph 9 of the said notice records that a proposal for regularisation has been submitted by the sixth Respondent Society and an assurance is given in the said paragraph that the said proposal for regularisation will be dealt with as per the provisions of law and if necessary, action as per notice under Section 53(1) of the MRTP Act will be taken.

2. Today, the learned counsel appearing for the Municipal Corporation has tendered across the bar a letter dated 12th January,

2018 addressed by the Executive Engineer (Building Proposal) E.S.-II to the Secretary of the sixth Respondent Society. The said letter shows that on 15th December, 2017 a letter was addressed by the sixth Respondent to the Municipal Corporation regarding regularisation. However, the said letter itself records no application has been submitted by the Society through an Architect by online mode.

3. Therefore, as of today, even an application for regularisation of the illegalities mentioned in the notice dated 25th January, 2007 has not been made. Therefore, as assured in the affidavit, an action on the basis of the notice dated 25th January, 2007 will have to be taken by the Municipal Corporation.

4. Perusal of the prayers made in the petition show that first two prayers seek a writ of mandamus for implementation of the notice. As far as third prayer is concerned, the Petitioner seeks a writ of mandamus against the seventh Respondent. Seventh Respondent is not a State within the meaning of Article 12 of the Constitution, and therefore, no writ can be issued against the said Respondent. Hence, we dispose of the petition by passing the following order:

- (i) We direct the Mumbai Municipal Corporation to take appropriate steps for effective implementation of the notice dated 25th January, 2007 (Exhibit “C” to the petition) as expeditiously as possible and in any event within a period of one month from the date on which this order is uploaded;
- (ii) We make it clear that we have not made adjudication on the right of the Society to claim regularisation;
- (iii) As regards prayer clauses (a-ii) and (a-iii), are concerned, liberty is granted to the Petitioner to take out an appropriate proceedings in accordance with law.

Sd/-
[P. N. DESHMUKH, J.]

Sd/-
[A. S. OKA, J.]