

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.1904 OF 2017**

Anwar Khan Gulam Mohammed Khan

..Petitioner

vs.

The Municipal Corporation of Greater Mumbai
and 4 Ors.

...Respondents

Ms.Lyra Fernandes i/b M/s. Udaipuri & Co. for the Petitioner.

Ms. Shital Mane for the Respondent-BMC.

Mr. Vaibhav Gaikwad for the Respondent No.4.

Mr.Manish Upadhyay, AGP for the Respondent No.5.

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

DATE : 23rd FEBRUARY, 2018

P.C.:

. Perused the order dated 16th January 2018 by which the parties were put to notice that an endeavour shall be made to finally decide the petition at the stage of admission.

2. The Petitioner made an application to the Respondent No.1- Municipal Corporation for regularization of certain illegal constructions in the building known as Arab Bungalow (Kazim Building) situated at C.S. No.1866, Mirza Ali Street, Mumbai. The illegal constructions were carried on the second and the third floors and also on the terrace. The said application made by the Petitioner was rejected by the order dated 20th September 2012. Being aggrieved by the said order, the Petitioner preferred an appeal under section 47 of the Maharashtra Regional & Town Planning Act, 1966 (for short the "MRTP Act"). By the order dated 17th January 2017, the Hon'ble Minister of the State for Urban Development Department dismissed the said appeal.

3. With the assistance of the learned counsel, we have perused

the order of the Appellate Authority. The first clause of the impugned order contains the reasons recorded by the Planning Authority for rejecting the application for regularization. The second clause reproduces the orders passed by this Court on 2nd February 2016 and 12th February 2016. Clause 3 consists of only one sentence which records that the impugned order rejecting the application for regularization is legal and proper. Clause 4 again consists of one sentence stating that there was no merit in the appeal preferred by the Petitioner. Thus, for dismissing the appeal, no reasons have been recorded on merits. In fact the four paragraphs which purport to record reasons, do not contain any reasons.

4. Thus, the Appellate Authority has not done its duty of recording the reasons for dismissing the appeal preferred by the Petitioner. Hence, there is no option but to set aside the said order and send back the appeal for a fresh hearing.

5. In this Petition, there is also a challenge to the order dated 20th September 2012 by which the application for regularization was rejected by the Municipal Corporation. All submissions made in this petition in support of the challenge to the said order dated 20th September 2012 can always be urged in the appeal.

6. Hence, we dispose of the petition by passing the following order:

ORDER

i) The impugned order dated 17th January 2017 (Exhibit 'Z' to the petition) is hereby quashed and set aside and the appeal preferred by the Petitioner which is disposed of by the impugned order dated 17th January 2017 is restored to the file of the State Government;

ii) We direct the parties to the Appeal to remain present before the Appellate Authority on 7th March 2018 at 3.00 p.m. for fixing the date of hearing;

iii) The Appellate Authority shall decide the appeal as expeditiously as possible and in any event within a period of 6 weeks from 7th March 2018. Needless to add that the appeal shall be decided in accordance with law after recording reasons;

iv) All contentions of the parties on merits are kept open;

v) The Petition is disposed of on the above terms;

vi) All concerned to act on an authenticated copy of this order.

(P.N. DESHMUKH, J)

(A.S. OKA, J.)