

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

WRIT PETITION (LDG.) NO. 2193 OF 2018

Dhanashree Rohan Shelar. ... Petitioner.
V/s.
Municipal Corporation of Greater Mumbai
and others. ... Respondents.

Mr.Mandar Limaye for the applicant petitioner.

Ms.Pallavi Thakar for respondent Nos.1 and 2.

Mr.Sarang Aradhya for respondent Nos.3 to 5.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 10th July 2018.

P.C.:

Not on board. Taken up on board.

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2. Heard the learned counsel for the petitioner, the learned counsel appearing for the respondent Nos.1 and 2 and the learned counsel appearing for the respondent Nos.3 to 5.

3. The challenge in this petition under Article 226 of the Constitution of India is to the notice dated 25th April 2018 issued under section 351 of the Mumbai Municipal Corporation Act, 1888 (for short

“the said Act”) as well as to the order dated 11th June 2018 passed by the first respondent- Municipal Corporation. By the said order, the petitioner has been directed to demolish the structure subject matter of the notice dated 25th April 2018.

4. The petitioner has filed an undertaking on oath on 4th July 2018 which is already taken on record and marked as “U-1” for identification. By the said undertaking, the petitioner has undertaken to vacate the structure subject matter of the impugned notice and the impugned order on or before 30th April 2019. The petitioner has stated that she alone is in possession of the structure and that she will not part with the possession thereof or create third party rights in respect of the structure. The learned counsel appearing for the respondent Nos.3 to 5, on instructions from the said respondents who are stated to be personally present in the Court, makes a statement that the said respondents do not wish to apply for regularization of the subject structure and that they have no objection if by accepting the undertaking, time to vacate is granted to the petitioner. We accept the said statement.

5. The petitioner is running a Pre-school in the subject structure. By accepting the subject structure as illegal, the petitioner has given the aforesaid undertaking. Only in the light of the fact that the petitioner is running a Pre-school and that the owners of the land have no objection, we propose to protect the petitioner for a limited period.

6. The learned counsel appearing for the respondent Nos.1 and 2 submits that longer time may not be granted. It is only because the

petitioner is running a Pre-school, we are inclined to grant time in view of the undertaking of the petitioner.

7. Accordingly, we pass the following order:

- (i) The writ petition is rejected;
- (ii) The undertaking of the petitioner taken on record and marked as “U-1” for identification is accepted;
- (iii) In view of the aforesaid undertaking, action of demolition shall not be taken on the basis of the impugned notice and the impugned order till 30th April 2019;
- (iv) On the failure of the petitioner to vacate the subject structure and hand over the vacant and peaceful possession thereof to the respondent Nos.1 and 2 on or before 30th April 2019 for demolition, it will be open for the Municipal Corporation to take forcible possession of the structure subject matter of this petition and to demolish the same without further notice to the petitioner.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)