

Sharayu Khot.

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

WRIT PETITION (L) NO. 2250 OF 2018

WITH

CHAMBER SUMMONS NO. 183 OF 2018

IN

WRIT PETITION (L) NO. 2250 OF 2018

Shreedharan R. Thaliya Parampil

...Petitioner

Versus

**Municipal Corporation of Greater
Mumbai & Ors.**

...Respondents

Mr. A.G. Damle, Senior Counsel, and Ms. Sanjukta Dey, for the
Petitioner.

Mr. A.Y. Sakhare, Senior Counsel, and Ms. K.H. Mastakar, for
the Respondents-BMC.

Mr. J.S. Kini, a/w Ms. Sapna S. Krishnappa, for the Applicant in
CHSW/183 of 2018.

**CORAM : ABHAY S. OKA AND
RIYAZ I. CHAGLA, JJ.**

DATE : 8 August 2018

ORDER :

1. Heard the learned Senior Counsel appearing for the Petitioner and the learned Senior Counsel appearing for the Respondents.

2. The challenge in this Petition is to the notice dated 26th June 2018 issued by the 1st Respondent of the demolition of the subject structure. Our attention is invited to the order dated 21st February 2008 passed by this Court in the earlier Writ Petitions filed by the present Petitioner under which the Petitioner was permitted to apply for regularization of the structure subject matter of the notice dated 18th December 2013 issued under Section 351 of the Mumbai Municipal Corporation Act, 1888 (for short "*the said Act*"). It appears that on the ground that the Petitioner did not apply for regularization, the impugned notice dated 26th June 2018 was issued to the Petitioner. Earlier there was some controversy about the acceptance of the Application for regularization by

on-line mode. For dealing with the said aspect, the Municipal Corporation has filed an Affidavit of Shri. Deelip P. Patil, the Executive Engineer (Building Proposal) E.S.-I. Before we deal with this Affidavit, we may note here that the on-line Application made by the Petitioner's Architect was accepted. The learned Senior Counsel appearing for the Respondents states that yesterday, the said application has been rejected.

3. In view of the order dated 21st February 2018 passed in earlier Writ Petitions filed by the Petitioner, time of one month is available to the Petitioner to prefer an Appeal as yesterday's on-line status must have disclosed the rejection of the Application.

4. We have perused the Affidavit of Shri. Deelip P. Patil. The Affidavit discloses that all the Applications under Sections 44 and 69 of the Maharashtra Regional and Town Planning Act, 1966 (for short "**MRTP Act**") and notices under Section 342 and 337 of the said Act are accepted by on-line

mode. The learned Senior Counsel appearing for the Respondents states that if an Application for regularization is made taking recourse to Sub-Section 3 of Section 53 of the MRTP Act, the same is also accepted on-line as it is essentially under Section 44 of the MRTP Act. As in the present case, if a party against whom an order under Section 351 of the said Act is passed, desires to apply for regularization, naturally the Application will have to be under Section 44 of the MRTP Act, which is bound to be made on-line.

5. We find that there is no prohibition under the MRTP Act or the said Act or under the Development Control Regulations for Greater Mumbai, 1991 on making submission of the applications under the aforesaid provisions by on-line mode compulsory. On the contrary, the Affidavit discloses that the said move by the Municipal Corporation is consistent with Section 7 of the Maharashtra Right to Public Services Act, 2015 and the office Memorandum dated 30th September 2016 issued by the Department of Industrial Policy and Promotion (DIPP) of the

Government. It is also stated that the said move is taken for improving India's ranking in the world in the case of doing business. In fact, paragraph 11 of the said Affidavit records that the Departments of the Municipal Corporation and other Departments of the State Government, the Airport Authority of India, Railway, etc. are integrated with Municipal Corporation single window clearance system so that data required for NOC's can be captured.

6. Therefore, we find that the compulsory on-line system introduced by the Municipal Corporation is not only consistent with the law and policies of the State and Central Government, but it may bring about the transparency in the entire process of grant of permissions.

7. Subject to what is observed above, we dispose of the Writ Petition by passing the following order:-

(i) It will be open for the Petitioner to prefer an

Appeal under Section 47 of the Maharashtra Regional and Town Planning Act, 1966 for challenging the order rejecting the Application for regularization;

- (ii) To enable the Petitioner to prefer an Appeal and to move the State Government for appropriate interim relief, action of demolition shall not be taken for a period of one month from today;
- (iii) If an Appeal is preferred by the Petitioner within a period of two weeks from today, the prayer for grant of *ad-interim* relief shall be disposed of within a period of one week by the Appellant Authority;
- (iv) All contentions on merits are kept open.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]