

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

WRIT PETITION (LDG.) NO. 2372 OF 2018

Mother Education Trust.	...	Petitioner.
V/s.		
Municipal Corporation of Greater Mumbai and another.	...	Respondents.

Ms.Anjali Helekar for the petitioner.
Ms.Pallavi Thakar for the respondent- MMC.

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

DATE : 31st July 2018.

P.C.:

Not on board. Taken up on board.

2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents. The challenge in this petition under Article 226 of the Constitution of India is to the notice dated 14th June 2018 issued under section 351 of the Mumbai Municipal Corporation Act, 1888 (for short “the said Act of 1888”) and the order dated 2nd July 2018 passed on the said notice. The order of demolition is in respect of the premises where the petitioner is running a school.

3. The learned counsel appearing for the petitioner has tendered an undertaking on oath of one Sally John Wren Desilva filed on behalf of

the petitioner- Trust. The said undertaking is taken on record and marked as “U-1” for identification. In the undertaking it is stated that the said Sally John Wren Desilva has been authorized by the Board of Trustees of the petitioner to file this undertaking.

4. The very fact that in the undertaking the petitioner has stated that the petitioner wishes to apply for regularization shows that the petitioner has accepted the correctness of the impugned notice and the impugned order. In the event the application for regularization is rejected, the petitioner has sought time to remove the structure on or before 9th May 2019 as the petitioner is running a school in the subject premises. To ensure that the school children are not affected, such a longer time deserves to be granted.

5. Accordingly, we pass the following order:

- (i) We accept the undertaking marked as “U-1” as an undertaking of the petitioner;
- (ii) It will be open for the petitioner to apply for regularization of the structure subject matter of the impugned notice and impugned order within a period of eight weeks from today. The said application shall be made to the first respondent through an Architect in a prescribed format and by a prescribed mode;
- (iii) The first respondent shall decide the said application within a period of sixty days from the date of filing of the

application. The order passed on the application shall be communicated to the petitioner;

- (iv) In the event the application is rejected, an action of demolition shall not be taken by the Municipal Corporation till 9th May 2019 to enable the petitioner to comply with paragraph-3 of the undertaking marked as “U-1” for identification;
- (v) On the failure of the petitioner to comply with the undertaking on or before 9th May 2019, it will be open for the first respondent to take action of demolition without further notice to the petitioner;
- (vi) In the event of failure of the petitioner to apply for regularization within a period of eight weeks from today, it will be open for the Municipal Corporation to take action on the basis of the impugned notice and the impugned order;
- (vii) All contentions of the parties on merits of the regularization application proposed to be made are kept open;
- (viii) The petition is disposed of on the above terms.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)