

VPH

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

WRIT PETITION No. 2049 OF 2015

Pravinsingh Raghuvirsingh Baghel ... Petitioner
Vs.
Municipal Corporation of of Gr. Mumbai & Ors ... Respondents

Mr. E. K. Sasidharan, for the Petitioner.

Ms. Vandana Mahadik, for the Respondent Nos. 1 to 3 – BMC.

Ms. Anjali Neel Helekar, for the Respondent No. 4.

Mr. Amit Shastri, AGP for the Respondent No. 5.

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

RESERVED ON : JANUARY 23, 2018

PRONOUNCED ON : FEBRUARY 6, 2018

PC :

1. The Petitioner has approached this Court challenging the order dated 8th July, 2015 passed by the Respondent No. 3 thereby holding that the structure which is subject matter in this petition is unauthorised, in view of the fact that the Petitioner has not placed any document to establish that the subject structure was erected prior to 1976. The learned counsel for the Petitioner submitted that in view of

the amended provisions of the Development Control Regulations, which are notified in 1991, the datum line of 1976 stood extended to 1995. It is therefore, contended that the impugned order passed on the basis of circular dated 15.5.1989 is apparently in ignorance of the statutory rules and is thus, not sustainable in law.

2. As against this, the learned counsel appearing for the Respondent Corporation submits that the question as to whether the DC Regulation, in particular Regulation 33(15), is applicable in the present petition or not is in dispute.

3. Having considered the submissions advanced as aforesaid, we may note that the question as to whether the case of the Petitioner would be covered by Regulation 33(15) of the DC Regulations, 1991 and if yes, as to whether the Petitioners are entitled to the benefit thereof, needs to be considered by the Competent Authority, which in this petition is Respondent No. 3. From the impugned order, it is noted that, said aspect with regard to grant of benefit to the Petitioner appears to have not been looked into by the said Authority. In the circumstances, we find it appropriate to remand the case back to the concerned Authority, to consider the same as

observed as above, by giving opportunity to the Petitioner to advance his submissions and then pass an appropriate order.

4. In the result, the impugned order is quashed and set aside. The case is remanded back to the Authority competent to consider the same afresh by giving opportunity of hearing to the Petitioner. We also make it clear that all allegations available to both the parties on merits are kept open.

5. Needless to mention that the Petitioner is at liberty to submit the documents before the said Authority. In the event if any adverse order is passed affecting the interest of the Petitioner, the same shall be stayed for a period of 15 days from the date of communication of the said order to the Petitioner.

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

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

Vinayak Halemath