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

WRIT PETITION No. 1927 OF 2015
WITH
SHOW CAUSE NOTICE No. 5 OF 2018

Kishor M. Kapadia … Petitioner
Vs.
Municipal Corporation of Gr. Mumbai & Ors… Respondents

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Mr. Firoz Bharucha a/w Ms. Nikita Vardhan i/b Kanga & Co.for the Petitioner.

Ms. Uma Palsule - Desai, for the Respondent Nos. 1 to 3.

Mr. R. R. Mishra, for the Respondent No. 4.

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

DATE : JANUARY 22, 2018

PC :

1. Heard the learned counsel for the counsel for the parties. Perused the orders dated 15th September, 2015 and 19th December, 2017. Though a contempt notice in terms of the order dated 19th December, 2017 has not been served, the officer to whom the contempt notice was ordered to be issued is present in the Court and

has tendered his affidavit. He stated that he was assigned duty as a Designated Officer of the concerned area on 1st August, 2016. He stated that the Designated Officer who was in charge of the area, when order dated 15th September, 2015 was passed, was transferred. He stated that the file was not available with him.

2. After issuing notice under Section 488 of the Mumbai Municipal Corporation Act, 1888 to the 4th Respondents, a Junior Engineer visited the subject flat on 8th January, 2018. In paragraphs 6 and 7 of the affidavit, the officer has stated thus:

> "6. I say that after the receipt of the plans, the said flat was again visited on 16.1.2018 when following irregularities were observed in flat No. 1015, West End Society, 10th floor, C Wing, Raheja Vihar, Andheri (East), Mumbai 400 072:
>
> 1. Horizontal extension of living room by shifting the wall over flower bed in flat No. 1015.
>
> 2. Removing of door of flat No. 1015 and constructing masonary wall in place of same.
>
> 3. Changing the kitchen into bedroom.
>
> 4. Covering the duct and converting the same into Water Closet.
>
> I say that the said addition and alteration work mentioned herein are beyond the sanctioned plan No.

CE/3327/BPES/AL dated 25.11.2005 and the copy of the said sanctioned Plan is annexed hereto as **Exhibit 'A'.** Hereto annexed and marked as **Exhibit B** is the inspection report dated 16.1.2018 and registered as 20.1.2018."

3. In paragraph 3, he has tendered unconditional apology to this Court. Though belatedly, the Designated Officer has made compliance. Though contempt notice is not served on him, he has appeared, filed an affidavit and has tendered apology. In view of the assurance given by him, the learned counsel for the Municipal Corporation, on instruction, states that a notice as stated in paragraph 7 of the affidavit, shall be served on the fourth Respondent during the course of the day. We accept the said statement. Hence, the petition need not be kept pending and we dispose of the petition by passing following order:

(i) We accept the apology tendered by Mr. Pravin Bharat Vasave and therefore, the contempt notice directed to be issued by order 19th December, 2017 is discharged;

(ii) We accept the statements made in paragraphs 6 and 7 of the affidavit and the statement made across the bar

that a notice will be served on the fourth Respondent during the course of the day;

(iii) It is obvious that subject to the remedies which may be available to the fourth Respondent in respect of the notice, the Municipal Corporation is bound to take the said notice to its logical end;

(iv) We, however, clarify that we have not made final adjudication on correctness or otherwise of paragraph 6 of the affidavit.

(v) The writ petition is disposed of in the aforesaid terms.

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

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

Vinayak Halemath