

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

REVIEW PETITION NO. 58 OF 2018
IN
WRIT PETITION NO. 573 OF 2018

Mohd. Aslam Mohd. Habib Shaikh. ... Petitioner.
V/s.
Municipal Corporation for Greater Mumbai
and another. ... Respondents.

Mr.V.T.Dubey for the petitioner.

CORAM : A.S.OKA AND A.S.GADKARI, JJ.

DATE : 21st September 2018.

P.C.:

Heard the learned counsel appearing for the review petitioner. The review is sought of the order dated 5th February 2018 passed in the writ petition. The said order reads thus:

“1 Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents. The learned counsel for the petitioner states that the petitioner is present before the Court and on his instructions, the learned Counsel states that the petitioner undertakes to withdraw L.C. Suit No.1874 of 2016 filed by the petitioner in the City Civil Court. On instructions he states that the petitioner desires to apply for regularization of the structures subject matter of the notice dated 22nd March 2016 and the order dated 2nd July 2016. The petitioner has given undertaking which is marked as U1 for identification in which he has undertaken to remove the offending structure in the event the respondents do not regularize the structure.

2 Thus, the petitioner has accepted that the structure subject matter of the impugned notice and impugned order is illegal. We accept the undertaking of the petitioner to withdraw L.C. Suit No.1874 of 2016. We accept the undertaking of the petitioner dated 3rd February 2018 (marked as U1 for identification). Hence we pass following order :

ORDER

(i) It is open for the petitioner to make an application for regularization of the subject structure within a period of 6 weeks from today. Application shall be made through a licensed Architect by OnLine mode. The application made by the petitioner shall be decided by the concerned officer of the Mumbai Municipal Corporation within a period of sixty days from the date of filing of the application.

(ii) Order passed on the application be communicated to the petitioner's Architect. Till the date of communication of the order to the petitioner's Architect, the action of demolition shall not be taken on the basis of impugned order dated 2nd July 2016. In the event the structure is regularized, it is obvious that the impugned order will not be acted upon.

(iii) In the event the application for regularization is rejected and if the petitioner fails to remove the structure within a period of one month from the date on which the order of rejection is communicated to his Architect, without prejudice to other remedies of the respondents, they shall forthwith take action of demolition of the illegal structure without issuing any further notice to the petitioner.

(iv) The petition is disposed of on above terms.”

What was challenged before the Division Bench by filing writ petition by the review petitioner/ petitioner was a notice of demolition dated 22nd March 2016 and the order dated 2nd July 2016. The petitioner gave

undertaking to withdraw the civil suit already filed by him in the City Civil Court and further undertaking that in the event an application for regularization made by the petitioner is rejected, the petitioner will remove the offending structure. Clause-2 of the said order dated 5th February 2018 shows that these undertakings were accepted by the Court and by accepting the undertakings, the petition was disposed of.

2. Admittedly, the petitioner did not apply for regularization in terms of the said order. Therefore, on 1st September 2018, the Municipal Corporation issued notice under section 488 of the Mumbai Municipal Corporation Act, 1888 to the petitioner on the basis of the order dated 2nd July 2016. The petitioner filed Writ Petition (Ldg.) No.2942/2018 for challenging the said notice which was a consequential notice to the order dated 2nd July 2016 which was subject matter of challenge in Writ Petition (Ldg.) No.170/2018 (Writ Petition No.573/2018). The said writ petition was disposed of in view of the order dated 5th February 2018 sought to be reviewed.

3. The learned counsel appearing for the petitioner submitted that certain documents (Exh.A and A1) were available with the petitioner to show that the structure subject matter of the order dated 2nd July 2016 was authorized. However, he could not produce the said documents. It is submitted that the land on which the subject structure is situated is declared as slum area.

4. According to us, the review petition is completely misconceived. The petitioner had filed a civil suit in the City Civil Court for challenging the order of demolition. Writ Petition (Ldg.) No.170/2018 was filed for challenging the same order of demolition. The order sought to be reviewed which is dated 5th February 2018 records that the petitioner gave an undertaking to withdraw the suit and stated that he wanted to apply for regularization. As stated earlier, the undertaking was given by the petitioner that in the event the application for regularization is rejected, he will remove the offending structure. The Court relied upon the said statement and the undertaking and showed leniency by permitting the petitioner to apply for regularization. The Court protected the structure of the petitioner. However, the petitioner has not even filed an application for regularization.

5. The order of which review is sought is based on the statement made by the petitioner and the undertaking given by him. The petitioner made a solemn statement that he wanted to apply for regularization of the subject structure thereby accepting that the subject structure was completely illegal.

6. Hence, there is no error apparent on the face of record and even otherwise there is no ground for review. The review petition is rejected.

(A.S.GADKARI, J.)

(A.S.OKA, J.)