

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

WRIT PETITION NO. 2706 OF 2017

Mohd. Yunus Jusab.	...	Petitioner.
V/s.		
State of Maharashtra and others.	...	Respondents.

Ms.Vidhya N. Shet i/b. Vaid & Associates for the applicant petitioner.
Mr.Himanshu Takke, AGP for respondent No.1.
Ms.Vandana Mahadik for the respondent- MMC.

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

DATE : 23rd April 2018.

PC.:

Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent No.2. The prayer in this petition under Article 226 of the Constitution of India is for directing the second respondent to initiate action as regards the unauthorized construction made by the third respondent.

2. It appears from the order dated 22nd February 2018 passed by this Court that the Mumbai Municipal Corporation had passed an order of demolition of the subject structure on 23rd October 2017. However, in a pending suit, the learned Judge of the City Civil Court directed the Municipal Corporation to pass a fresh order. The learned counsel appearing for the second respondent has placed on record the order dated 20th April 2018 passed under section 351 of the Mumbai Municipal Corporation Act, 1888 directing demolition of the subject structure. She states that a copy of the said order has been served to the third respondent on 20th April 2018.

3. From 20th April 2018, fifteen days' time will have to be given to the third respondent to remove the offending structure as per the directions issued by this Court in terms of the decision in the case of ***Sopan Maruti Thopte v. Pune Municipal Corporation***¹.

4. The learned counsel appearing for the petitioner submits that the petition may be kept pending as the Municipal Corporation may not take action. However, we are of the view that the Municipal Corporation will have to take action to implement the said order after expiry of period of fifteen days from the date of service of the said order dated 20th April 2018 to the third respondent, unless the Municipal Corporation is prevented from doing so by a prohibitory order passed by a competent Court. We have made no adjudication on the merits of the order. Hence, it is not necessary to keep the petition pending and we dispose of the same by passing the following order:

- (i) We direct the second respondent to act upon the said order dated 20th April 2018 and to take the said order to the logical conclusion in terms of observations made in this order;
- (ii) The petition is disposed of with the above directions.
- (iii) Compliance affidavit shall be filed by the second respondent on or before 22nd June 2018.
- (iv) For reporting compliance, the petition shall be listed on 29th June 2018 under the caption of direction.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)

1 AIR 1996 Bom 304