

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

WRIT PETITION NO. 49 OF 2015

Manoj Goradia. ... Petitioner.
V/s.
Municipal Corporation of Greater Mumbai
and another. ... Respondents.

Mr.Aditya Shiralkar with Mr.Jayesh Metry i/b. RMG Law Associates
for the petitioner

Ms.K.H.Mastakar for the respondent- MMC.

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

DATE : 28th March 2018.

PC.:

Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents. Considering the narrow controversy involved in this petition, the same deserves to be disposed of finally. We issue rule. Advocates for the respondents waive service. Hence, it is taken up forthwith for hearing.

2. The order passed on the last date records the statement of the petitioner that this petition is confined to flat No.33 in the subject building i.e. Nirmal Bhuvan, Vile-Parle (West), Mumbai- 400 056.

3. A notice under sub-section (1) of section 53 of the Maharashtra Regional and Town Planning Act, 1966 was served in the name of the petitioner alleging that an objectionable work as set out in the schedule to the notice was carried out by the petitioner. The said schedule reads thus:

“(Description of the unauthorized development together
with the particulars of land)

Unauthorized removal of doors and windows,
internal partition walls & part portion of flats no.13, 14,
21, 22, 23, 33 and 34 of Nirmal Bhuvan CHS Ltd,
Bapubhai vasi road, Vile-Parle (w), Mumbai-56”

A reply was issued to the said notice by the advocate of the petitioner on 18th July 2014. In paragraph-2 of the reply, apart from denying that the work as alleged was carried out, it was specifically contended that at no point of time, the first respondent had inspected the said flat. In paragraph-3, it was specifically contended that the schedule of unauthorized work is very vague and particulars have not been furnished.

5. After considering the reply, the order dated 24th September 2014 was passed by the Assistant Commissioner of the first respondent holding that the work as set out in the schedule was illegally carried out.

6. Perusal of the said order dated 24th September 2014 shows that each paragraph of the reply to the notice has been separately dealt with. As stated earlier, paragraph-2 of the reply not only contains a denial of the allegations made in the notice but also contains a specific

assertion that at no point of time, the first respondent had inspected the flat in question. In response to the said paragraph-2 of the reply, all that the Assistant Commissioner has observed in his order is that the petitioner did not produce any authentic documents or any substantial proof to prove what is stated in paragraph-2. The contention that the subject flat was never inspected was not even dealt with. Thus, one of the main contentions in the reply that the impugned notice has been issued without inspection of flat in question is not at all dealt with by the Assistant Commissioner while passing the final order dated 24th September 2014.

7. There is an affidavit-in-reply by Shri Akhtar Husain Abdul Rashid Shaikh, A.E.B.F., K/W Ward. A copy of the report of the inspection allegedly carried out on 16th July 2014 is annexed to the affidavit. The report only reproduces what is set out in the schedule. In the additional affidavit dated 20th March 2018 filed by Shri R.B.Gurav, Assistant Engineer of the first respondent, it is stated that he made a site visit on 27th February 2018. He has stated that at that time he found that all the flats were locked. He has stated that the window frames of the building were broken and displaced from their original position. It is stated that window shutters as well as frames were also found to be removed. The photographs taken by him are annexed to the said report. The site visit appears to have been made by the said officer without notice to the petitioner.

8. As the main contention raised in the reply dated 18th July 2015 has not been considered, by setting aside the impugned order, the

matter will have to be remitted back to the Assistant Commissioner for passing a fresh order. Accordingly, we pass the following order:

(i) The impugned order dated 24th September 2014 is hereby quashed and set aside;

(ii) The Assistant Commissioner, K-West Ward of the respondent Municipal Corporation shall pass a fresh order on notice dated 16th July 2014 after considering the reply dated 18th July 2014. If the Assistant Commissioner deems it necessary, before passing a fresh order, it will be open for him to inspect flat No.33 after giving advance notice to the petitioner;

(iii) A fresh order shall be passed on the notice dated 16th July 2014 as expeditiously as possible, and in any event, within a period of three months from today;

(iv) The order passed on the notice dated 16th July 2014 shall be communicated to the petitioner. Till the date of communication of the said order, no action shall be taken on the basis of the said notice;

(v) If the order passed on the notice be adverse to the petitioner, no action shall be taken on the basis of the said order in respect of flat No.33 for a period of three weeks from the date on which the said order is served to the petitioner;

(vi) All contentions on merits are kept open;

(vii) We make it clear that the impugned order has been set aside only in relation to flat No.33 and, therefore, on the

basis of the impugned order, the first respondent is free to take action in respect of other flats mentioned in the show cause notice. However, while taking action, the Municipal Corporation shall ensure that no damage is caused to flat No.33;

(viii) Rule is made absolute in terms of the above order;

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)