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

WRIT PETITION NO. 3027 OF 2014

Ramesh N. Kapadia ... Petitioner
Versus
Mumbai Municipal Corporation & Ors. ... Respondents

Mr. Pradeep J. Thorat, for the Petitioner.
Ms. Pallavi Thakar, for the Respondent – BMC.
Mr. Akshay Patil, & Mr. Mohan Salian i/b MGS Legal for
Respondent No.3.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATED: 27TH FEBRUARY 2018.

PC:-

1. Heard the learned counsel appearing for the Petitioner and the learned counsel for the Respondents. The challenge in this Petition is to the notice dated 15th September 2014 issued by the Mumbai Municipal Corporation. The notice records that the building consisting ground plus one upper floor which is subject matter of this Petition is in a dangerous condition and therefore, it is required to be pulled down.
2. Earlier on 18th July 2013, a notice was issued by the Mumbai Municipal Corporation calling upon the owner to carry out major structural repairs under the strict supervision of licensed structural engineer.

3. Ad-interim relief was granted to the Petitioner on 27th November 2014. Clauses 2 and 3 of the said order read thus:

“2. Stand over to 3rd December 2014. Till then, the Respondents shall maintain status-quo in respect of the subject Bungalow, as described in prayer clause (c) of the Petition.

3. Learned counsel for the Petitioner submits that the Petitioner and his family members are occupying the subject bungalow known as “Janu Kunj” at their own risk. No third party shall be blamed in case any untoward incident takes place in relation to the alleged dilapidated condition of the subject building.”

4. By order dated 3rd December 2014, the said ad-interim relief was continued. Even on 25th March 2015, the same ad-interim was continued. Orders dated 19th August 2015, 22nd September 2015, 15th October 2015, 1st March 2016, 29th September 2016, 28th June 2017 and 4th August 2017 show that ad-interim relief granted on 27 November 2014 was continued. By the said order, the Respondents were directed to maintain status quo in respect of subject building and the undertaking of the Petitioner and his family members was recorded that they will occupy the subject bungalow at their own risk.

5. Today, an Affidavit is tendered by the Petitioner which is affirmed on 27th February 2018. In paragraph 7, the Petitioner has

stated that pending hearing of the present Petition, he has carried out extensive repairs to the said building and therefore, the building is in sound condition and the structure is stable. This Court in this Petition was examining the validity of the a notice issued under Section 354 of the Mumbai Municipal Corporation Act, 1888, which records a conclusion that the subject building is in a dilapidated condition and it needs to be pulled down. The building was not pulled down only in the light of the order dated 27th November 2014. When the Petitioner's structure was protected from demolition under the ad-interim orders of the Court, the Petitioner could not have carried out extensive repairs to the building without seeking permission of this Court as well as without seeking permission of the Municipal Corporation. The learned counsel appearing for the Petitioner on instructions states that though an application for grant of permission to carry out repairs was made, the Municipal Corporation did not grant permission. If this Court was not to grant ad-interim relief on 27th November 2014 and continue the same till today, the subject building would have been demolished. Therefore, in our opinion, act of carrying out extensive repairs to the subject building without permission of this Court and without permission of the Municipal Corporation amounts to overreaching the authority of this Court.

6. Perusal of the orders passed from time to time to show that on 3rd December 2014, 19th August 2015, 22nd September 2015, 3rd March 2016, 1st March 2017 and 28th June 2017, the Writ Petition reached and the Advocates were heard. These orders show that at no stage the Petitioner pointed out to the Court that either he has commenced extensive repairs or that he has carried out extensive repairs.

7. Writ jurisdiction of this Court under Article 226 of the Constitution of India is always equitable and discretionary. The Petitioner has taken undue advantage of the ad-interim relief granted by this Court from 27th November 2014, which was extended from time to time till today, by carry out extensive repairs without permission of this Court and without permission of the Municipal Corporation. When this Court was seized of the issue whether the condition of the building is such that it requires immediately demolition or whether it can be repaired, the Petitioner could not have taken law in to his own hands and carried out extensive repairs.

8. Considering the conduct of the Petitioner, he cannot be allowed to prosecute this Petition under Article 226 of the Constitution of India any further. Accordingly Writ Petition is dismissed.

9. Considering the conduct of the Petitioner, this is a fit case where Petitioner is made to pay substantial amount by way of costs to the Mumbai Municipal Corporation. Considering the fact that the Petitioner is the owner of a bungalow and that by taking undue advantage of ad-interim order passed by this Court, he has illegally carried out extensive repairs to the bungalow, we quantify the amount of costs at Rs.1 lakh which should be paid by the Petitioner to the Mumbai Municipal Corporation within a period of one month from the date on which this order is uploaded.

10. The learned counsel appearing for the Petitioner seeks continuation of ad-interim relief to enable the Petitioner to challenge this order. After considering the conduct of the Petitioner, we have imposed cost of Rs.1 lakh. Therefore, if the Petitioner wants the continuation ad-interim relief, he will have to comply with the said order immediately. Accordingly, we direct that ad-interim relief granted on 27th November 2014 shall continue to operate for a period of four weeks from the date on which this order is uploaded subject to condition that the Petitioner shall maintain status quo in all respects in respect of the building and that the Petitioner shall pay the aforesaid amount of costs to the Mumbai Municipal Corporation within a period of two weeks from the date on which this order is uploaded. If the amount of

costs is not paid within the stipulated period of two weeks from today, this protection will stand vacated.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)