

Sharayu Khot.

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

WRIT PETITION NO. 50 OF 2016

Sakharam Kashinath Patil

...Petitioner

Versus

**The Municipal Corporation of Greater
Mumbai & Ors.**

...Respondents

Mr. Anil R. Mishra, for the Petitioner.

Ms. Vandana Mahadik, for the Respondents No. 1 to 3-BMC.

Mr. Kundan Valvi, Asst.Engineer (B & F) P/North Ward is
present.

**CORAM : ABHAY S. OKA AND
RIYAZ I. CHAGLA, JJ.**

DATE : 2 April 2018

ORDER :

1. Heard the learned Counsel appearing for the

Petitioner and the learned Counsel appearing for the 1st to 3rd Respondents.

2. The grievance in this Petition under Article 226 of the Constitution of India is that though the 1st Respondent issued a notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 (for short "*the said Act*") to the 4th and 5th Respondents, no further action was taken on the basis of the said notice. Our attention is invited to a copy of the said notice which is at *Exh.F* to the Petition. The notice is of 18 August 2009.

3. The Petitioner has annexed a copy of the Suit being L.C. Suit No. 3023 of 2009 filed by the 4th and 5th Respondent in the City Civil Court at Mumbai. A copy of the final Judgment dated 14 January 2013 is annexed to the Petition. Paragraph 1 of the said Judgment shows that on the basis of the notice in respect of which the grievance has been made is in this Petition, an order of demolition was made on 23 November 2009. By the

said Judgment, the order dated 23 November 2009 was declared to be illegal. A direction was issued under the said Judgment to the Assistant Municipal Commissioner to reconsider the Reply dated 26 August 2009 and to pass a reasoned order within a period of two months.

4. Today the learned Counsel appearing for the 1st to 3rd Respondents states that a reasoned order has not been passed within the stipulated period of two months. The learned Counsel appearing for the 1st to 3rd Respondents on instructions of Shri. Kundan Valvi, Assistant Engineer (B & F), P/North Ward, who is personally present in Court, states that a fresh order shall be passed in terms of the said Judgment dated 14 January 2013 within four weeks from today. We accept the said statement.

5. In view of the aforesaid statement, at this stage, it is not necessary to entertain this Petition. Accordingly, we dispose of the Writ Petition by passing the following order:-

- (i) We accept the aforesaid statement made by the learned Counsel appearing for the 1st to 3rd Respondents on instructions;
- (ii) Accordingly, we direct that a fresh order shall be passed on the notice dated 18 August 2009 as expeditiously as possible and in any event, within a period of four weeks from today;
- (iii) A copy of the order passed on the Show Cause Notice be provided to the Petitioner;
- (iv) In the event of the failure of Assistant Municipal Commissioner to pass a fresh order within the time stipulated as above, it will be always open for the Petitioner to file a fresh Petition in this Court;
- (v) We make it clear that we have no adjudication on merits of the disputed notice dated 18

August 2009;

- (vi) All contentions are left open to be decided by the Assistant Municipal Commissioner.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]