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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.3521 OF 2017**

Kalwantchand Diwanchand Arora ... Petitioner
Vs.
Municipal Corporation of Greater Mumbai and Ors. ... Respondents

Ms. Aparna Devkar i/by M.P. Vashi & Associates for the Petitioner.
Ms. K.H. Mastakar for the Respondent – BMC.
Mr. Yashwant A. Ganachari, Senior Inspector, present.

**CORAM : A.S. OKA &
RIYAZ I. CHAGLA, JJ.**

DATE : 7th MARCH, 2018

P.C.

. **Not on board. Taken on board.**

1 This Petition was heard on earlier dates. Today, the learned counsel appearing for the first to fourth respondents on instructions of Shri Yashwant Ashok Ganachari, Senior Inspector, Encroachment/Removal, 'S' Ward (I/C) states that the petitioner's stall was demolished by the Municipal Corporation though there is no specific order passed by any officer competent to direct demolition or to permit demolition. On instructions, she further states that the said respondents have no objection if the petitioner is permitted to re-erect the stall as it existed on 17th September, 2017 at his own cost subject to right of the Mumbai

Municipal Corporation to initiate action of demolition in accordance with law. We accept the said statement. In view of the statement, we need not keep the Petition pending and we dispose of the same by passing the following order :-

ORDER

(i) It will be open for the petitioner to reconstruct the stall No.4 which was demolished on 17th September, 2017 by using similar construction material. The stall shall be reconstructed having the same dimensions which the demolished structure had as on 17th September, 2017. Before re-erecting the stall, the petitioner shall give a notice in writing to the Designated Officer of the concerned ward of the date and time at which the petitioner proposes to reconstruct the stall. The designated officer or any officer nominated by him will be entitled to remain present at the time of reconstruction of the stall for ensuring that the stall reconstructed is of the same dimensions and by using similar material as it existed on 17th September, 2017;

(ii) The reconstruction of the stall will not create any equity in favour of the petitioner. If the original stall was illegal and/or was otherwise lawfully required to be

removed, it will be always open for the Municipal Corporation to remove or demolish the stall after following due process of law which will naturally include strict compliance with the principles of natural justice;

(iii) We make it clear that we have made no adjudication on the legality and validity of the original stall which was demolished on 17th September, 2017;

(iv) After the stall is re-erected, it will be open for the petitioner to apply for renewal of license in respect of the stall which was demolished provided the license was valid till 17th September, 2017. Otherwise it will be open for the petitioner to apply for fresh license. If such applications are made, the Municipal Corporation shall dispose of the same in accordance with law.

(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)