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

WRIT PETITION (L) No. 3751 OF 2017

Mohammed Shafi Ansari ... Petitioner
Vs.
Municipal Corporation for Gr. Mumbai & Ors. ... Respondents

Mr. Mohd. Quis i/b Khan Mohd., Y. G. Panjatan, for the Petitioner.
Ms. K. H. Mastakar, for the Respondent Nos. 1 to 3 – BMC.
Mr. Sukanta Karmakar, AGP for the Respondent Nos. 4, 8 & 9.
Mr. Hassan Khan i/b Mr. Yadunath Chaudhari, for the Respondent
No. 5.

CORAM : A. S. OKA, &
P. N. DESHMUKH, JJ.

DATE : FEBRUARY 21, 2018

PC :

1. Heard the learned counsel for the Petitioner, the learned advocate for the 1st to 3rd Respondents, the learned AGP for the 4th, 8th and 9th Respondents and the learned counsel for the 5th Respondent. The challenge in this petition filed under Article 226 of the Constitution of India is to the notice dated 9th November, 2017 purported to be a notice under Section 314 of the Mumbai Municipal Corporation Act, 1888. The contention raised in the petition is that for

the various reasons, the provisions of Section 314 of the said Act of 1888 cannot be invoked. The Petitioner has relied upon certain documents.

2. Considering the nature of challenge and the documents produced, it will be appropriate if by granting opportunity to the Petitioner to file a reply, the Assistant Engineer passes a reasoned order. Accordingly, we dispose of the petition by the following order:

- (i) It will be open for the Petitioner to file a reply to the impugned notice dated 9th November, 2017 within a period of two weeks from today. Alongwith the reply, the Petitioner shall produce copies of the requisite documents;
- (ii) After considering the reply and the documents submitted by the Petitioner, the Assistant Engineer who has issued the impugned notice or any other officer who is authorised to take action under Section 314 of the Mumbai Municipal Corporation Act, 1888 shall pass an appropriate order. The said appropriate order shall be

passed within a period of two months from today;

- (iii) Till the date on which the order passed by the Officer is communicated to the Petitioner and for a period of 15 days thereafter, action of demolition of subject structure shall not be taken by the Municipal Corporation;
- (iv) The above relief is granted subject to the Petitioner filing a fresh undertaking within three weeks from today in terms of the order dated 16th January, 2018 stating therein that he will continue to abide by the stipulations in the earlier affidavit / undertaking till the expiry of 15 days from the date on which decision of the concerned Municipal Officer is communicated to the Petitioner. If such an undertaking is not filed within three weeks, the protection granted to the Petitioner shall stand vacated;
- (v) All contentions of the parties are kept open.

Sd/-

[P. N. DESHMUKH, J.]

Sd/-

[A. S. OKA, J.]