

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3080 OF 2018

Mr. Nitin Kumar

...Petitioner

V/s.

State of Maharashtra
and Ors.

....Respondents

Mr. Sandeep Mishra a/w. Mr. Prakash Mishra,
Advocate for the petitioner.

Mr. A.I.I. Patel, Additional Government Pleader for
respondent no.1.

Mr. Rohit P. Sakhadeo, Advocate for respondents
no.2 and 3.

Mr. Minal Dedhia, i/by. Mr. Melvi Ranchoddas & Co.,
Advocate for respondent no.4.

**CORAM : B.P. DHARMADHIKARI, &
SANDEEP K. SHINDE, JJ.**

Tuesday, 15th October, 2019.

P.C. :

1. Matter was heard earlier on 4th october,

2018 and came to be adjourned. Again it was heard on 27th August, 2019 and with reference to specific issue, it came to be adjourned to today.

2. Effort of petitioner is to demonstrate that in absence of two staircases, the structure cannot be regularised and Occupancy Certificate cannot be issued. Other challenge is to construction of 14th (part), 15th and 16th floor over and above the sanctioned limit.

3. Learned Counsel appearing for CIDCO has invited our attention to the fact that second staircase has been made mandatory from 1st May, 2011, that too for structures in respect of which Commencement Certificate has not been issued before the said date. According to him, in present matter, Commencement Certificate was issued on 3rd August, 2007 itself.

4. Respondent no.4 who has carried out the construction has chosen not to assist the Court in

deciding the matter. Even today, learned Counsel appearing for respondent no.4 is seeking adjournment on the ground that her Office has received the papers from respondent no.4 recently. This conduct of respondent no.4 cannot be countenanced. During arguments we find that after initial Commencement Certificate, there have been revised/additional Commencement Certificates after 1st May, 2011. In these facts, question will be what was the stage of construction on 1st May, 2011. This assumes importance because of relevance of second staircase has been explained by State Government in the background of National Building Code in its communication dated 4th May, 2010.

5. The date on record is insufficient to consider this aspect.

6. However, considering the position, we are inclined to give petitioner an opportunity to submit necessary data to respondents no.2 and 3 again. If petitioner has already made any

representation/representations, we permit petitioner leave to file additional representation with necessary documents and photographs within four weeks from today.

7. After receipt thereof, respondents no.2 and 3 shall hear the petitioners as also respondent no.4, take suitable decision in accordance with law within next four months.

8. With these directions, we dispose off the Writ Petition.

(SANDEEP K. SHINDE, J.)

(B.P. DHARMADHIKARI, J.)