

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 1013 OF 2018
IN
APPEAL FROM ORDER NO.554 OF 2017**

Mr. Ismail Piran Qureshi
through Ajmal Ishaque Sayed
authorized person of Rubab Ismail
Piran Qureshi

...Applicant

Versus

Municipal Corporation of Gr.
Mumbai & Anr.

...Respondents

.....

Mr. Gauraj Shah for the Applicant.

Mr. N.V. Walawalkar, Sr. Advocate a/w. Ms. Madhuri More for the
Respondent no.1-MCGM.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE: 25th /26th FEBRUARY, 2019.

P.C.:-

1. This is an application for interim relief filed in a disposed of Appeal from Order No.554 of 2017. By this application, the applicant has sought to restrain the respondent/defendant from taking any action in respect of the suit premises in pursuance of notice dated 30th October, 2018 issued under Section 488 of the MMC Act, till the decision on regularization application dated 6th November, 2017 communicated to the applicant. The applicant has also sought to restrain the respondent Corporation from taking any action in respect

of the suit premises for a period of two weeks in the event of adverse decision, in the regularization proposal bearing No.9635/342 filed online through the licensed Architect.

2. Heard Shri Shah, the learned Counsel for the applicant and Shri Walavalkar, the learned Senior Counsel for the respondent-BMC. I have perused the records.

3. By order dated 19th June, 2017, this Court (Coram: G.S.Patel,J.) had disposed of Appeal from Order (St.) No.18904/2017. Paragraph nos.1 and 2 of the said order read thus :-

“1. The appeal can be disposed of by permitting the applicants to file a regularization application in the prescribed manner to the Executive Engineer, Building Proposal, Eastern Suburbs through their licensed surveyor/architect. This application for regularization is to be filed on or before 18th August 2017. If not filed by that date, the MCGM is not required to consider any application.

2. If filed on or before that date, the MCGM will consider the application and pass an order thereon on or before 1st September 2017. If the application is refused for any reason, the MCGM will not take any action for a period of two weeks thereafter to enable the plaintiffs to approach the Civil Court.”

4. Thus, in terms of the said Order dated 19th July, 2017, the applicant was permitted to file a regularization application in the

prescribed manner to the Executive Engineer through their licensed Surveyor/Architect. The said application was to be filed on or before 18th August, 2017. This Court had made it clear that the MCGM was not required to consider the application for regularization, if not filed by the said date. This Court (Coram : Mrs. Mridula Bhatkar, J.) by Order dated 14th August, 2017, in Civil Application No. 733 of 2017 in Appeal from Order No.554 of 2017 extended the period for filing the said application for regularization by three weeks.

5. The Applicant thereafter filed another Civil Application No. 949 of 2017 stating that an online application for regularization of his structure was already presented before the Corporation on 06th November, 2017. By the said application, the applicant sought to restrain the Corporation from taking any action in respect of the suit structure with further direction to decide the proposal. The said application was disposed of by order dated 17th November, 2017, which reads thus:-

“3. The applicant’s online application for regularization of the structure is now tabled before the Commissioner of Corporation. In view of the Order dated 19th July, 2017, the MCGM to decide the said application for regularization of the structure on or before 8th December, 2017. Till then, the Corporation not to carry on further demolition and the applicant shall not reconstruct the demolished

*portion. Parties to maintain status quo as on today.
4.Civil application stands disposed of.”*

6. The Applicant has once again approached this Court with a grievance that the Respondent has issued a notice under Section 488 of the MMC Act and the Respondent has proposed to demolish the said structure without taking any decision on the regularization proposal dated 6.11.2017.

7. The Respondent has disputed that the Applicant had filed a regularisation application and that the same is pending decision. This statement is recorded in the order dated 29th November, 2018 as under :-

“2. It is submitted on behalf of the applicant that as per the order dated 17th November, 2017, the applicant's online application for regularization was treated to be pending and this Court had directed the Municipal Corporation to decide the said application by 8th December, 2017. It is submitted that without deciding the said application further notice dated 23rd October, 2018 came to be issued. The said notice is under Section 488 of the Mumbai Municipal Corporation Act, 1988. It is submitted on behalf of the respondents that in view of subsequent communication dated 12th February, 2018, it has been found that the said application was not forwarded by the Architect to the Municipal Corporation.”

8. Shri Sagar Karpe, the Asst. Engineer, Building and Factory

department of the respondent Corporation has filed the affidavit dated 7th December, 2018 wherein he has stated that as per the order dated 14.08.2017, the applicant was required to file the application for regularization within three weeks. The officer of the Building Proposal Department vide letter dated 27th September, 2017 called upon the Executive Engineer, Building Proposal, to offer remarks whether the application for regularization of the subject building was received from the applicant and also as regards the status of the said application. He states that by letter dated 11th October, 2017 the Asst. Engineer, Building Proposal Department reported that as per the available online records, the Department had not received online application for regularization of the notice structure. In view of the said letter, the Officer proceeded to demolish the unauthorized structure. The applicant has stated that in the Application No.949/2017 the applicant produced one online application for regularization of the structure and stated that the same was tabled before the Commissioner of the Corporation. It is in view of this application produced by the applicant and the statement made by him that this Court by order dated 17.11.2017 had directed the Corporation to disposed of the said application.

9. This witness has stated that the said application produced by the applicant was forwarded to the Executive Engineer and he was called upon to offer his remarks regarding the status dated 06/11/2017. The executive engineer reported that Building Proposal Department had not received such regularization application. IT was also reported that the copy of the application produced by the applicant in Civil Application No.949 of 2017 was at the stage of Architect Consol on online and the same was not forwarded by the Architect to MCGM for further process. The witness reiterated that the applicant had not forwarded any such application for regularization.

10. The records thus indicate that the applicant had come out with a specific plea that he had filed a regularization application on 6th November, 2017, which statement was specifically disputed by the respondent. In view of the controversy as regards factum of filing of the application, the applicant was directed to place on record a print out of the online application submitted before the Corporation. The Applicant has not produced the printout of the application but has placed on record Annexure III i.e. the applicant's indemnity cum undertaking, personal identification information of owners, Malmatta

patra, proposed regularization, appointment letter for Architect and a letter addressed to the Deputy Chief Engineer, Building proposal.

11. Mr. N.V. Walawalkar, the learned senior counsel for the Respondent submits that a person's desirous of applying for permission under Section 44 is required to write to the Planning Authority giving full details of the development carried on the land, explaining the reasons for carrying out such development unauthorizedly and apply for permission for retention of such land or building to which notice under Section 53 of MRTP relates. In terms of Rule 10, he is also required to submit to the Planning Authority relevant particulars and documents specified in Sub Rule (2) of Rule 6. The learned counsel for the Respondent-Corporation submits that the Applicant has not applied for regularization in the prescribed manner, as directed by order dated 19th July, 2017.

12. The respondent has placed on record a copy of letter addressed by the Architect of the applicant, wherein the Architect has stated that he had created a temporary proposal on 06.11.2017. He has stated that since the Applicant had not paid the requisite scrutiny fees and not furnished the documents, the file could not be submitted for

further process.

13. As per the order dated 19/07/2017, the applicant was required to submit the application in prescribed form. The order clearly states that MCGM was not required to consider any application, if not filed within the time stipulated by the Court. The letter issued by the Architect indicate that the applicant has not filed a regularization application in the prescribed manner despite extension of time. The Applicants has sought to restrain the Respondents from demolishing the structure on a false pretext that he had already filed an application for regularization and that the same was pending for decision before the Corporation. It is thus evident that the Applicant has not approached the Court with clean hands and he is not entitled for any equitable relief.

14. Considering the above facts and circumstances, the application has no merits and is accordingly dismissed.

15. Interim relief, if any, stands vacated.

(SMT. ANUJA PRABHUDESSAI, J.)