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

PUBLIC INTEREST LITIGATION NO. 32 OF 2018

Nityanand Harnarayan Mishra

... Petitioner.

V/s.

Vice President, MHADA and Ors.

... Respondents.

Mr. Sachin Gelye for the Petitioner.

Mr. Abhay Patki, AGP for Respondent No.1.

Ms. K.H. Mastakar for Respondent Nos. 2 and 3 – MCGM.

***CORAM : PRADEEP NANDRAJOG, C.J. &
N.M. JAMDAR, J.***

DATE : 20 JUNE 2019.

P.C. :-

We have perused the averments in the Writ Petition and in view of the facts pleaded which have been made good with reference to the orders and communications annexed as annexures to the Writ Petition, we are in a position to dispose of the Petition by passing suitable directions.

2. Case pleaded is that the 5th Respondent obtained permission from the 2nd Respondent – Corporation to refurbish the existing construction on Plot No. 29 - 29A, Bhuleshwar Road, Mumbai comprising ground floor, 3 upper floors. That under the garb of refurbish permission obtained, the Respondent No.5 demolished the existing construction and while effecting reconstruction, built covered area more than what was existing in the old structure.

3. Taking cognizance of the afore-noted activity of the 5th Respondent, the Junior Engineer of the Ward concerned, on inspection issued a notice under Section 354(A) of the Bombay Municipal Corporation Act on 2 November 2012. The Notice was to stop further construction. Thereafter, on 8 November 2012 the Assistant Engineer issued a notice as to why the illegal construction be not demolished and pursuant to the notice passed an order on 26 November 2012 directing the unauthorized construction to be demolished. The 5th Respondent filed a Civil Suit numbered as L.C.

Suit No.5005 of 2012 in the City Civil Court, Mumbai challenging the demolition orders and the stop notice issued in which the order to maintain status-quo was passed and ultimately this Suit came to be dismissed in default on 9 October 2014, intimation whereof was given by the Assistant Law Officer to the Engineering Department on 4 August 2015.

4. The grievance in the Petition is that inspite of demolition orders being passed and there being no order in force passed by any Court restraining the Corporation from giving effect to the demolition order, the Corporation is not taking action to give effect to the demolition order passed.

5. The facts noted hereinabove warrants the directions to be issued to the Commissioner of the Greater Mumbai Municipal Corporation to call for the relevant file from the Engineering Department of Ward 'C' of the Bombay Municipal Corporation and upon ensuring that there is no judicial order passed requiring status-

quo to be maintained and upon satisfying themselves that the demolition has attained finality to ensure that the Engineering Department demolished the unauthorized construction. Necessary action shall be taken by the Commissioner of the Corporation within four weeks of receipt of authenticated copy of this order.

6. Learned Counsel who appears for the 2nd Respondent would ensure that she obtains and transmits an authenticated copy of this order to the Commissioner of the Corporation.

N.M. JAMDAR, J.

CHIEF JUSTICE