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

WRIT PETITION (LODGING) NO.2837 OF 2019

Ganesh A. Tandel	...Petitioner
V/s.	
The Mumbai Municipal Corporation & Ors.	...Respondents

Mr.M.M. Vashi, Senior Counsel with A.A. Siddiquie & Associates for the Petitioner.

Mr.R.Y. Sirsikar for the Respondent Nos. 1 to 3.

CORAM : R.D. DHANUKA, J.
DATE : 4TH OCTOBER, 2019.

P.C. :-

1. The papers are allowed to be produced at 3:00 p.m. in view of extreme urgency.

2. The petitioner has impugned the order dated 25th September, 2019 passed by the respondents rejecting the application filed by the petitioner for regularization of the impugned structure.

3. The petitioner had filed a suit before the Civil Court impugning the notice issued under section 354-A of the Mumbai Municipal Corporation Act. The Civil Court had initially granted ad-interim relief in favour of the petitioner in the said notice of motion which relief was subsequently vacated. The appeal from order filed by the petitioner against the said order also came to be dismissed by

this Court.

4. The petitioner did not challenge the said order passed by this Court dismissing the appeal from order filed by the petitioner.

5. The petitioner thereafter applied for regularization of the impugned structure. The Mumbai Municipal Corporation rejected the said application for regularization on 25th September, 2019. In the meanwhile, the petitioner filed a fresh notice of motion in the pending suit *inter-alia* praying for an injunction. Learned Trial Court rejected ad-interim relief in the said notice of motion after considering the fact that the petitioner had filed an application for regularization. Being aggrieved by the said order dated 25th September, 2019, the petitioner preferred appeal from order before this Court. Mr.Vashi, learned senior counsel appearing for the petitioner states that the said appeal from order filed by the petitioner is also dismissed.

6. It is submitted by the learned senior counsel that since the application filed by the petitioner for regularization has been rejected only on technical ground and not on merit, the structures which are partly demolished shall be protected till such application for regularization is decided by the Mumbai Municipal Corporation. In support of this submission, learned senior counsel for the petitioner placed reliance on the order passed by the Division Bench of this Court on 29th March, 2019 in Writ Petition (Lodging) No.1034 of 2019 and would submit that the petitioner is entitled to protection from

demolition of the impugned structure in view of the pendency of the application for regularization filed under section 53(3) of the M.R.T.P. Act.

7. Mr.Sirsikar, learned counsel appearing for the Mumbai Municipal Corporation on the other hand invited my attention to the notice issued by the Mumbai Municipal Corporation on 24th October, 2016 to the petitioner and would submit that even in the past the impugned structure was demolished by the Mumbai Municipal Corporation and after effecting such demolition, the petitioner reconstructed the impugned structure. He strongly placed reliance on the *prima-facie* observations rendered by the learned Trial Court as well as of this Court in the order dated 19th August, 2019 in Appeal from Order No.15 of 2017 and also the impugned order passed by the learned Trial Court on 24th September, 2019 and would submit that no indulgence should be shown to the petitioner. He submits that part of the structure is already demolished and the process of demolition is going on.

8. A perusal of the record indicates that it is not in dispute that in the past also, the impugned unauthorized constructions carried out by the petitioner were demolished by the Mumbai Municipal Corporation. The petitioner has carried out a fresh construction after carrying out demolition of the impugned structure by the Mumbai Municipal Corporation. By two orders passed by the learned Trial Court, interim relief has been rejected. By two separate

orders, this Court has dismissed the appeal from order.

9. I have perused all the observations made by this Court in the order dated 19th August, 2019 about the conduct of the petitioner. Mr.Vashi, learned senior counsel for the petitioner does not dispute that the appeal from order which is dismissed by this Court two days back was after considering the fact that the application for regularization made by the petitioner has been rejected by the Mumbai Municipal Corporation by an order dated 24th September, 2019. Considering the above facts and circumstances, I am not inclined to interfere with the impugned order of rejection of the application for regularization of the impugned structure made by the Mumbai Municipal Corporation. The petition is devoid of merit and is accordingly dismissed. There shall be no order as to costs.

(R.D. DHANUKA, J.)