

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 2072 OF 2019

Gulambhai S/o. Vallibhai Raje

.. Petitioner

Versus

The Mumbai Municipal Corporation & Ors. .. Respondents

-
- Mr. Surel Shah i/by Prashant Darandale for the Petitioner
 - Mr. A.Y. Sakhare, Sr. Advocate a/w Yamuna Parekh, Vandana Mahadik and Rupali Adate for MCGM
 - Mr. S.B. Gore, AGP for the State
 - Mr. Ashok Pandey a/w Sachin Pawar for Respondent Nos. 4 and 5 in WP 2072/2019 and for Respondent Nos. 4 and 6 in WP 1204/19
 - Mr. Sunil Tawade, Asst. Engineer, Building & Factory present.
 - Mr. Devendra Kumar Jain, Deputy Municipal Commissioner present.
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CORAM : S.J. KATHAWALLA, &
MILIND N. JADHAV, JJ.

DATE : FEBRUARY 18, 2020.

P.C.:

1. By the above Writ Petition, the petitioner had made a grievance that respondent Nos. 4 and 5 (who before the amendment were arrayed as respondent Nos. 6 and 7) have carried out unauthorized construction in the subject premises. In view thereof, the Division Bench of this Court on 19.2.2018 passed the following order :-

"1. Not on board. Taken on board.

2. Heard the learned counsel appearing for the Petitioner and learned counsel appearing for Respondent Nos. 1 and 2. The learned counsel appearing for the Petitioner states that Petitioner will carry out the amendment to the prayers as the Petitioner is not seeking any relief in this Petition as against Respondent Nos. 3 and 4. We accordingly permit amendment which shall be carried out within a period of one week from the date on which the order is uploaded.

3. Issue notice to Respondent Nos. 5 to 7 returnable on 23rd April 2018.

4. We direct the second Respondent or any officer nominated by the second Respondent to visit the site with a view to ascertain whether any illegal construction as alleged has been made. If he finds that illegal construction has been made, the second Respondent initiate action in accordance with law.

5. If the officer concerned finds that any illegal construction is in progress, the first and second Respondent shall take all possible steps to stop the illegal construction in accordance with law."

2. In response to our query, as to why the directions given/ recorded in paragraphs 4 and 5 of the order have not been complied with, Mr. Sakhare, the Learned Senior Advocate appearing for the Corporation has explained that a notice was

already issued to the owners and occupiers as far back as on 27.7.2017 and in fact, an order was passed on 11.9.2018 which is impugned by Smt. Tanuja Bhagat by filing L.C. Suit No.2493 of 2018 before the City Civil Court at Mumbai wherein an order directing the Corporation not to take any coercive action is passed.

3. Though the Corporation ought to have moved this Court seeking modification of the Order, in our view, the same has not caused prejudice to any party. In fact, the Corporation is being involved in a long drawn fight / dispute between the petitioner and respondent No.4.

4. We are informed that the petitioner has in the said suit No. 2493 of 2018 filed Chamber Summons No. 109/2019 for being joined as party defendant to the suit. Notice of Motion No.3968 of 2018 is also placed for hearing on 27th March, 2020. The learned Judge to whom the Chamber Summons is assigned in the City Civil Court at Mumbai shall dispose of the said Chamber Summons within a period of two week from today. The hearing in Notice of Motion No. 3968 of 2018 shall

commence on 27th March, 2020 and the same shall be disposed off on or before 24th April, 2020.

5. The City Civil Court shall not grant any adjournment to the parties either in the Chamber Summons or in the Notice of Motion, unless absolutely necessary. If any party is desirous of impugning the order passed in the Chamber Summons, they shall do so by filing appropriate proceedings within a period of one week from the date of receipt of the order. This direction is given so that the parties do not delay the hearing of Notice of Motion which is scheduled on 27.3.2020.

6. The above Writ Petition is accordingly is disposed off.

[MILIND N. JADHAV, J.]

[S.J. KATHAWALLA, J.]