

Prakash Amarnani	...	Petitioner
versus		
Municipal Corporation of Greater Mumbai	...	Respondent

**CORAM: S.J. KATHAWALLA &
R.I.CHAGLA, JJ.**

P.C.:

1. The Petitioner had filed Long Cause Suit being No.4875 of 2000 before the City Civil Court, Mumbai, seeking directions against the Municipal Corporation of Greater Mumbai, not to demolish the structure in possession and occupation of the Petitioner admeasuring 15 x 20 ft. near C.T.O. Compound, Juhu Road, Santacruz (W), Mumbai – 400 054. In the said suit, the petitioner also took out Notice of Motion seeking ad-interim/interim reliefs. On 25th August, 2000 the learned Judge of the City Civil Court, Mumbai, disposed of the Suit by passing the following order :

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survives in the Suit. Suit is dismissed as withdrawn and removed from the board. No order as to costs. Thereby notice of motion no.3341 of 2000 stands disposed off.”

2. Thus, the Corporation could not have demolished the structure of the Petitioner without following due process of law. The Corporation issued a notice dated 21st September, 2000 calling upon the Petitioner to show sufficient cause within the period prescribed therein as to why the said structure should not be removed/pulled down. The Petitioner filed its reply dated 27th September, 2000 to the said notice received from the Corporation. The Corporation admittedly, did not take any action thereafter. However, the Corporation on 8th March, 2018 demolished the structure of the Petitioner. The Corporation has therefore, breached the statement made/undertaking given to the City Civil Court as recorded in its order dated 25th August, 2000, i.e. not to demolish the structure without following due process of law. The Petitioner has therefore, filed the present writ petition seeking directions against the Corporation to reconstruct the said structure and thereafter follow due process of law.

3. In view of the aforesaid conduct of the Corporation, we pass the following order :

(i) The Petitioner is allowed to reconstruct the structure with CI sheets walls and A.C. roof admeasuring 11x 12 st.ft. initially at their expense.

(ii) The Corporation shall give hearing to the Petitioner and by following due process of law, pass appropriate orders.

(iii) If the order passed by the Corporation is adverse to the Petitioner, the Corporation shall be free to demolish the newly constructed structure.

(iv) The order of reconstruction is passed only to arrest the tendency of civic officials not complying with the orders passed by the Courts and carrying out demolition in breach of the statements/undertakings given/made before the Courts.

(v) The Writ Petition is accordingly disposed of.

(R.I.CHAGLA, J.)

(S.J.KATHAWALLA, J.)