

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

WRIT PETITION No. 2484 OF 2015

Smt. Snehal Nitin Shah

..Petitioner.

Vs

Municipal Corporation of Gr. Mumbai & Ors

..Respondents.

Mr. Amar A. Gharte, Advocate i/by Dipesh U. Siroya, Advocate for the
Petitioner.

Mr. Ajit Kenjale a/with Ms. Yamuna Parekh for Respondent-MCGM.

**CORAM : S.J. KATHAWALLA &
B. P. COLABAWALLA, JJ.**
DATED :- 30th JANUARY, 2020.

P.C. :-

1. The Petitioner has filed the above Writ Petition, inter alia, seeking
the following reliefs:-

(a) *Rule be issued.*

(b) *That this Court be pleased to issue a writ of mandamus
or a writ in the nature of mandamus or any other appropriate writ,
order or direction thereby calling for the entire records from the*

Respondent of the said shop i.e.,shop No. G-3 in the “G” Wing of Rasdhara CHS Ltd. situated at 397, S.V.P. Road, Mumbai 400 004 and after examining the legality and validity of the impugned actions, be pleased to declare that order 13th November, 2014 and accordingly be pleased to declare that Notice dated 22nd August, 2014 bearing No. DOII/A.E. (B & F)/Ward No. 216/’D’ Ward/351/1613/2014 under Section 351 of Mumbai Municipal Corporation Act, 1888 is illegal, null and void and subject to verification of record be pleased to direct the Respondent to permit Petitioner to reconstruct the part portion which is demolished by the Respondent.”

2. The facts in the matter are as under:-
3. The Petitioner was issued a notice by the Mumbai Municipal Corporation dated 22nd August, 2014 under Section 351 of the Mumbai Municipal Corporation Act, 1888 setting out the unauthorized work carried out by the Petitioner and calling upon her to explain as to why the said unauthorized work should not be removed or pulled down. The Petitioner filed her reply dated 27th August, 2014 wherein the Petitioner referred to the mezzanine floor as loft and alleged that the same is 50 years old. The Petitioner also contended that the said shop along with loft is assessed by the Municipal Corporation and enclosed a copy of the assessment extract of 1996/97. The Petitioner failed to produce any other document in support of her case that the loft is 50 years old.

4. The Corporation by its order dated 15th November, 2014 held that the only document submitted by the Petitioner is a photocopy of assessment extract for the year 1996-97 in respect of the subject property which does not prove the authorization of the notice structure or the existence of the notice structure prior to 1st April, 1962 which is the basic requirement for commercial structure in a tolerated category. The Corporation called upon the Petitioner to demolish the structure within seven days and warned the Petitioner that if she fails to do so the Corporation will carry out the demolition at her risk and will also initiate action under Section 475-A of the Mumbai Municipal Corporation Act, 1888. The Petitioner did not comply with the Order and also did not impugn the communication received from the Corporation. The Petitioner also failed to seek regularization of the loft as per the Circular of the Municipal Corporation dated 8th August, 2005 for grant of permission for regularization of loft/mezzanine floor constructed prior to 15th August, 1997.

5. The Corporation thereafter demolished the structures on 29th June, 2015. The Petitioner filed the above Writ Petition only on 3rd August, 2015 seeking relief set out hereinabove.

6. In our view, since the Petitioner failed to produce any documents in support of her case that the impugned structure is 50 years old, the Corporation

correctly rejected her explanation/reply to the notice issued under Section 351 of the Act and passed an order dated 15th November, 2014 calling upon the Petitioner to demolish the structure. The Petitioner failed to comply with the said order and failed to apply for regularization of the structure as per the circular of the Corporation dated 8th August, 2005 seeking regularization of loft/mezzanine floor constructed prior to 15th August, 1997. The Municipal Corporation was therefore justified in demolishing her structure. The question therefore of now granting relief to reconstruct the loft / mezzanine floor which is already demolished, does not arise. The Petition is therefore dismissed.

(B. P. COLABAWALLA, J)

(S.J. KATHAWALLA, J.)