

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

WRIT PETITION NO.3592 OF 2021

Mohammed Yasin Ansari

... Petitioner

Vs.

Municipal Commissioner, Municipal Corporation
of Greater Mumbai & Ors.

... Respondents

Mr. Mujahid Mulla for the Petitioner.

Mr. Kunal Waghmare for the Respondent-Corporation.

Mr. Yahya Ghogari a/w Mr. Mustafa Shabbir Shamim, Ms. Priya Chaurasia
i/by Shamim & Company for Respondent No.6.

**CORAM : S.V. GANGAPURWALA &
ARIF S. DOCTOR, JJ.**

DATED : 24TH NOVEMBER 2022

PC. :

1. The learned Advocate for the Petitioner submits that Respondent No.6 has illegally carried out the construction, no permission has been sanctioned in favour of Respondent No.6 by the Respondent-Corporation and the illegal construction has been carried out. The construction has been carried out to the effect that the window of the Petitioner is blocked. Earlier the structure of Respondent No.6 was below the window of the Petitioner. Now the same has been increased by blocking the window of the Petitioner. Therefore, right of the Petitioner is affected.

2. According to the learned Advocate, the Respondent No.6 is guilty of increasing the area and the area has been increased by Respondent No.6 to 360 sq. ft. Earlier the said area was only 21.10 sq. mtrs. According to the learned Advocate, the Respondent-Corporation is not taking action against Respondent No.6 of the illegal construction.

3. The learned Advocate for Respondent No.6 submits that the Petitioner is guilty of encroachment and carried out illegal constructions. The height of Respondent No.6's structure is restricted to 14 ft. The same is permissible. According to the learned Advocate, after the notice was given by the Respondent-Corporation, the excess part has been demolished and the height of the structure is reduced to 14 ft.

4. The learned Advocate for the Respondent-Corporation submits that the Colony Officer, E-Ward has inspected the site on 24th March 2022. The area of the Petitioner is 360 ft. and in the inspection it was found that the height of the structure is less than 14 ft. and the structure was ground plus mezzanine. Earlier to that, notice was issued by the Colony Officer for demolition of the Respondent No.6's structure as the height was increased above 14 ft.

5. The height, at the time when the notice was issued by the Respondent-Corporation, of the Respondent No.6's structure was 16 ft. and thereafter the structure was demolished and the present height is less than 14 ft.

6. The Corporation is expected to take action against the unauthorised and illegal structures. The Corporation has filed its Affidavit.

Paragraphs 5 to 10 of the Affidavit read thus :-

- “5. I say and submit that thereafter the said site was inspected by the Rent Controller on 30.06.2021. Thereafter, the notice bearing No.ACE/SR/88/Colony dt.24.08.2021 u/s 3Z-1(4) of the Slum Act was issued to the Mohd. Sajid Mohd. Hussain Kazi. I say that in the said notice the noticee i.e. Respondent No.6 is directed to remove the notice structure within 24 hours and submit the document regarding the notice structure. Hereto annexed and marked as **Exhibit '3'** is the copy of the said notice dt. 24.08.2021.*
- 6. I say and submit that thereafter the final order was issued to the respondent No.6 bearing No.ACE/SR/147/Colony dt. 24.09.2021. In the said final notice, it is mentioned that the height of the hut was increased above the 14ft and therefore directed noticee to remove the said structure within 48 hours. Hereto annexed and marked as **Exhibit '4'** is the copy of the said final notice dt.24.09.2021.*
- 7. I say and submit that thereafter Colony Officer by letter dt.29.09.2021 informed the Asstt. Engineer (Building Factory) to arrange demolition of the said notice structure. I say and submit that on 17.01.2021, the said notice*

dt.24.08.2021 was executed and the demolition was carried out by A.E., Building Factory 'E' Ward. Hereto annexed and marked as Exhibit '5' is the copy of photographs of the demolition dt.17.01.2021.

8. *I say and submit that in the present petition the Hon'ble High Court by order dt. 07.03.2022 directed the officer of the respondent corporation to inspect the site structure and file report before the Hon'ble High Court.*
 9. *I say and submit that the Colony Officer 'E' Ward alongwith the Rent Collector inspected the site on 24.03.2022. At the time of inspection it was observed that the structure is permanent structure adm area 360 sq. ft. During the site inspection it was found that height of the hut was less than 14 ft. and the structure consist of ground floor + mezzanine floor. Hereto annexed and marked as Exhibit '6' is the copy of Inspection Report dt.24.03.2022.*
 10. *I say and submit that earlier when the notice was given the height of the structure was about 16 ft. and thereafter the structure was demolished and at present the height of the structure is less than 14 ft. Hereto annexed and marked as Exhibit '7' is the copy of the photographs of the said structure. I say and submit that if these respondent comes to the conclusion after verifying the documents again, that structure mentioned in the petition is not tolerable as per the State Government circular dt. 05.06.2002 as well as if any unauthorized construction without permission, then theses respondents will take further action by following due process of law."*
7. It appears that the Corporation has taken some steps against Respondent No.6 and it is submitted that part of the structure which was

above 14 ft. has been demolished and now the structure is less than 14 ft. If the Petitioner's easementary right is affected, the Petitioner has remedy open before the civil court for redressal of his easementary right. In that case, the Petitioner would be at liberty to avail the said remedy.

8. The Corporation has opined that the structure is now less than 14 ft. The affidavit is also filed to the effect that if the Corporation comes to the conclusion, after verifying the documents again, that the structure mentioned in the Petition is not tolerable as per the State Government's Circular dated 05th June 2002 as well as if any unauthorised construction is carried out without permission, the Respondent-Corporation will take further action by following the due process of law. The Respondent-Corporation is duty bound to adhere to the affidavit filed by them and take action in accordance with law.

9. The Writ Petition as such is disposed of with the aforesaid observations.

(ARIF S. DOCTOR, J.)

(S.V. GANGAPURWALA, J.)