

Ghuge

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 102 OF 2007
WITH
INTERIM APPLICATION NO.651 OF 2023**

Shreepad Balkrishna Thithe ... Appellant
V/s.
The Municipal Corporation of Greater
Mumbai and Anr ... Respondents

Mr. Mohankumar K. for the appellant.

Mr. Santosh Parad for the respondent No.1.

Mr. R.A. Thorat Senior Advocate a/w Pratibha D.
Shelake for the respondent No.2.

Mr. S.K. Dhekale Court Receiver, High Court of
Bombay.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 1, 2023

P.C.:

1. The appeal rises out of dismissal of L.C. Suit No.2647 of 2002. The suit is filed challenging notice under Section 351 of Bombay Municipal Corporation Act, 1888 dated 11th October, 2001. By the impugned Judgment said suit has been dismissed aggrieved thereby plaintiff has filed present appeal.

2. During the pendency of the present appeal plaintiff on 15th January, 2021 has filed application for regularization based on

circular dated 18th August, 1987 and State Government policy for regularization.

3. Once such application for regularization is filed by the appellant, nothing remains to be adjudicated in the present appeal. As filing of such application for regularization proceeds on the premise that the construction which was subject matter of notice was unauthorized.

4. Since the applicant applied for regularization under Section 53(3) of the Maharashtra Regional Town Planning Act, 1966. The Municipal Corporation shall decide such application for regularization in accordance with law.

5. Till the application for regularization is pending, no adverse action in relation to construction which was the subject matter of notice under Section 351 of Bombay Municipal Corporation Act, 1888 shall be taken against the appellant.

6. Since the notice had been issued in the year 2001, the appropriate authority exercising power under Section 53(3) shall decide application for regularization dated 15th January, 2021 within Twelve (12) weeks from today.

7. In case the decision of appropriate authority is against the appellant, the protection granted by this Court shall remain in force for a period of Four (4) weeks from the date of communication of the order to the appellant.

8. The First Appeal stands disposed of in the above terms. As the First Appeal is disposed of the Interim application does not

survive.

9. Learned advocate for the appellant shall serve xerox copy of the regularization application to the learned advocate for the Municipal Corporation.

(AMIT BORKAR, J.)