

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1497 OF 2019

Nemchand Arjan Shah
Occupation: Business,
Residing at Flat No. 28,
Swayambhu Co-operative Housing Society Ltd.
Plot No. 30, Gorai-I, Borivali (West),
Mumbai-400 091.

.....Petitioner

V/s.

1. The Municipal Corporation of
Greater Mumbai, A Corporation
Established under the
Mumbai Municipal Corporation Act, 1888
and having its office
at : Mahapalika Marg, Mumbai-400 001.

2. The Assistant Municipal Commissioner,
Municipal Corporation of Greater Mumbai,
K/East Ward, Andheri (East),
Mumbai-400 069.

3. Kokilaben Khimji Shah
an Adult, Indian Inhabitant of Mumbai,
Aged about 67 years, Occupation: Business.

4. Sanjeev Khimji Shah
An adult, Indian Inhabitant of Mumbai,
Aged about 47 Years,
Occupation: Business.

5. Praful Khimji Shah

An adult, Indian Inhabitant of Mumbai,

Aged about 41 years,

Occupation: Business

Defendant Nos. 3,4 and 5,

having address at : House No. 59,

Arjan House, Tank Pakhadi,

Sahar Village, Andheri (East),

Mumbai – 400 099.

...Respondents.

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- Mr. Piyush Shah a/w. Mr. Dishang Shah with Ms Hetta Sagar with Mr. Shivam Desai for petitioner.
 - Mr. Makarand Kale with Mr. Praveen Tiwari I.by Mr. Rajesh Yadav for respondent nos. 3 to 5.
 - Mr. Kunal Waghmare-BMC.
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**CORAM : SUNIL B. SHUKRE &
RAJESH S. PATIL, J.J.**

DATE : 13th JULY 2023.

ORAL JUDGMENT : (PER SUNIL B. SHUKRE, J)

1. Heard. Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel for the petitioner, learned counsel for BMC and learned counsel for respondent nos. 3, 4 and 5.

2. By this petition the petitioner has sought a direction to the respondent nos.1 and 2 to initiate appropriate legal proceedings

against the respondent nos. 3 to 5 by issuing a legal notice under the provisions of the Maharashtra Regional Town Planning Act, 1966 or Mumbai Municipal Corporation Act, 1888 for illegal and unauthorised construction of a structure on the subject property.

3. Initially, learned counsel for the petitioner submitted that there is an admission given by respondent nos. 3, 4 and 5 in reply filed to the petition and the admission is about existence of unauthorised construction in the subject property. On a careful perusal of the reply so filed by respondent nos. 3, 4 and 5, we however, find that the submission is incorrect. There is no admission whatsoever given by respondent nos. 3,4 and 5 about the existence of unauthorised construction. The admission is related to what they believe to be unauthorised construction for which purpose, they are seeking appropriate relief from the Small Cause Court. Thus, unless and until the Small Causes Court records a finding of fact and passes a decree declaring that the construction referred to by respondent nos. 3, 4 and 5 is unauthorized, no one can say, including petitioner as well as respondent nos. 3 to 5, that there is some unauthorised construction, which is required to be appropriately dealt with under the provisions of law.

4. Learned counsel for the petitioner has invited our attention to the internal note of respondent nos. 1 and 2 in order to support his contention that even though the Corporation has internally found that there is unauthorised construction, no action has been taken by the Corporation as per their internal note, which is at page 45, which has been prepared in response to the public grievance raised by this petitioner. In the internal note, there is a remark that “inspect the site

if found illegal and take demolition,”. This remark shows that so far the Corporation has not found anything about making of unauthorised construction.

5. Learned counsel for the petitioner submits that he is right in law to compel the Corporation to record a finding of unauthorized construction once he makes a complaint. While it is true that when the complaint is made about making of unauthorised construction to the Corporation, the Corporation must take the complaint to its logical end and it has to be decided one way or the other by the Corporation and the Corporation would be required to do so within a reasonable period of time. Since this complaint, according to the learned counsel for the petitioner, is still pending, it would be appropriate that the Corporation takes a final decision on this complaint in accordance with law at the earliest.

6. In the result, we direct the Corporation to decide the complaint in accordance with law within eight weeks from the date of receipt this order.

7. Rule is made absolute in the above terms.

8. The petition is disposed of accordingly.

(RAJESH S. PATIL, J)

(SUNIL B. SHUKRE, J)