

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

WRIT PETITION (L.) NO.19818 OF 2023

Mufaiz Ziauddin Nawrang Petitioner

Versus

Brihanmumbai Municipal Corporation Respondent

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Mr.S.M. Gorwadkar, Senior Advocate i/b. Mr.N.A. Mogre,
Advocate for the Petitioner.

Mr.Kunal Waghmare, Advocate for the Respondent – BMC.

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**CORAM: SUNIL B. SHUKRE &
RAJESH S. PATIL, JJ.**

DATED : 27th JULY 2023

P.C. :

1 Heard learned Senior Advocate for the Petitioner
and learned counsel for the Corporation.

2 Rule. Rule made returnable forthwith. Heard
finally by consent.

3 By this Petition, basically the Petitioner has
challenged the notice issued under Section 354A of the
Mumbai Municipal Corporation Act, 1888 (“MMC Act”, for
short) calling upon them to show the authenticity of the
noticed structure i.e. ground plus five upper floors at 30/32,
Masjid Street, Mumbai, failing which the further notice was

*This order is corrected pursuant to the order dated 4th August, 2023
Rajeshri Aher*

given to the Petitioner for demolition of the noticed structure. According to the learned counsel for the Petitioner, reply to this notice was immediately given by the Petitioner on 3rd May, 2018, but, the say of the Petitioner was not considered at all by the Corporation. He further submits that some documents in support of the contentions of the Petitioner too were tendered, but, they were also not considered, and, suddenly, an order regarding providing of adequate police bandobast for demolition of the noticed structure was passed. Even this order is challenged in the petition.

4 Initially, we were under the impression that this Petition suffers from laches and inordinate delay, but, from the sequence of events unfolded before us by the learned senior advocate showing the steps taken by the Petitioner like his knocking at the doors of the civil court and then withdrawing the civil suit after having been given to understand that the property involved being a Waqf property only the Waqf Tribunal would have the jurisdiction and the Petitioner invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, we are satisfied that

the delay is appropriately and sufficiently explained, and, therefore, there is no reason for this Court now to dismiss the petition only on the ground of laches.

5 As regards the merits of the matter, we are of the view that this Court cannot go into the same, unless and until the competent authority of the Corporation applies its mind to the explanation submitted by the Petitioner, and also the documents tendered by the Petitioner, which has not been done so far here. In the circumstances, it would be rather appropriate that the parties are directed to approach the competent officer of the Corporation so that appropriate decision can be taken by the Corporation.

6 Accordingly, partly allowing the petition, we quash and set aside the impugned order regarding providing of adequate Police Bandobast and remand the matter back to the Corporation for fresh adjudication in accordance with law.

7 The competent officer of the Corporation shall take appropriate decision in the matter after considering the

material before him, and, hearing the Petitioner, as early as possibly, and, preferably within two weeks from the date of the appearance of the Petitioner before him. Petitioner shall appear before Respondent Corporation on 1st August, 2023, at 11:00 a.m.

8 We make it clear here that we have not made any observations on merits of the matter and are keeping all contentions open, and the Respondent would be free to decide the issue involved in the matter in its own discretion, in accordance with law.

9 Rule is made absolute in above terms. No costs.

(RAJESH S. PATIL, J.)

(SUNIL B. SHUKRE, J.)