

Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13132 OF 2024

Dinesh Shyamsunder Vyas ...Petitioner
Versus
Urban Development Department & Anr ...Respondents

Mr Vikhil Dhoka, i/b, M/s GM Legal for Petitioner.
Mr Ali Aqdas Kshan, i/b, Anil Mishra, for Respondent No. 9.
Ms M P Thakur, AGP, for the Respondent-State.
Mr Sanatosh Parad, for the Respondent-MCGM.

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CORAM M.S. Sonak &
 Kamal Khata, JJ.
DATED: 19 September 2024

PC:-

1. After this matter was argued for some time, and we were not persuaded to admit this petition or grant any interim reliefs, the learned Counsel for the Petitioner, based on instructions from the Petitioner, stated that the Petitioner would undertake to demolish the unauthorised constructions, which were refused to be regularised by the Brihanmumbai Municipal Corporation (“**BMC**”) and the appellate authority as referred to in the impugned orders. He states that these unauthorised structures, i.e., the turf and other structures

surrounding the turf, would be demolished within four weeks from today.

2. Based on the above undertaking, the learned Counsel for the Petitioner states that directions may be issued to the BMC not to execute its demolition order for four weeks. We clarify that during this period, the structure/turf should not be used for any purpose. We deferred the matter to 4.30 pm to enable the petitioner to file a formal undertaking since the learned counsel for the respondents submitted that even in the past, undertakings were given by the petitioner but not complied.

At 4.30 p.m.

3. The learned counsel for the Petitioner files an undertaking of the Petitioner, which reads as follows:-

“I, Dinesh Shyamsundar Vyas, aged 59 years, the Petitioner abovenamed, presently residing at C-206, Juhu Griha Swapna, Gulmohar Cross Road No. 4, Juhu, Mumbai-400049, do hereby state on solemn affirmation states as under:-

1. I am filing this Affidavit pursuant to the direction of this Hon'ble Court passed on 19th September, 2024.
2. I undertake to remove the subject structure i.e. artificial turf constructed on Non-Agricultural land bearing CTS No. 396, 396/1 to 4 at Khandubhai Desai Road, Vile Parle (West), Mumbai 400 056 within a period of 4 weeks from today i.e. 17th October, 2024 and until then I undertake to not use the subject structure.

I will make fresh Application for re-construction of the subject structure before the Respondent Nos. 2 to 8 as

a "temporary structure" only after removing the subject structure."

4. The above undertaking is taken on record and accepted. Consistent with the undertaking, the Petitioner must remove the subject structure, i.e. artificial turf, constructed on Non-Agricultural land bearing CTS No.396, 396/1 to 4 at Khandubhai Desai Road, Vile Parle (West), Mumbai 400 056, within four weeks from today, i.e. by 17 October 2024.

5. At this stage, the learned counsel for Respondent No.9 states that the Petitioner is also operating a Snack Bar named NGR Snack Bar. Based on instructions from the Petitioner, the learned counsel for the Petitioner states that no such snack bar or any other commercial activity is being operated. BMC officials should visit the site and ascertain whether snack bar or other commercial activities are carried out in the plot and around the turf. If any illegalities are noticed, action following the law must be taken forthwith.

6. The Petitioner must file a compliance affidavit along with photographs in this Court by 24 October 2024. The BMC must also inspect the site and confirm the status of compliance. The BMC must also file a compliance report along with photographs.

7. If the Petitioner complies with the undertaking in letter and spirit and, after demolition, applies to the Corporation for putting up turf or any other permissible structures, the Corporation should dispose of such application as

expeditiously as possible and preferably within six weeks of its making. However, we clarify that this direction should not be construed as a direction to grant such permission if it is otherwise not permissible under the law. This direction is only to consider and dispose of such application following law.

8. By accepting the above undertaking, we dispose of this Petition. List the matter on 14 November 2024 to consider compliance reports.

(Kamal Khata, J)

(M.S. Sonak, J)