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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.3156 OF 2005

Stephen Blaise Innocent D'Souza	...Petitioner
vs.	
Municipal Corporation of Greater Bombay	...Respondent

Mr.Indu Prakash i/b Indira Reddy for the petitioner
Ms Shobha Ajit Kumar for the respondent-Corporation

CORAM :A.S.OKA,J. (VACATON JUDGE).
DATE : DECEMBER 28,2005

P.C.:

1. Heard Advocate appearing for the Petitioner and Advocate appearing for Respondent-Corporation.

2. The learned Advocate for the Petitioner stated that the Petitioner will file a suit for challenging the order dated 22nd December 2005 (Exh.H to the Petition). He stated that a limited protection may be granted only for a period of few days to enable the Petitioner to file a suit for challenging the said order. He has invited my attention to the notice dated 22nd December 2005 issued by the Respondent-Corporation under Section 351 of Mumbai Municipal Corporation Act, 1888. He submitted that without considering the reply dated 23rd December 2005 submitted by the Petitioner, the Respondent may take action of demolition.

3. The learned Advocate for the Respondent-Corporation stated that action will not be taken on the basis of notice dated 22nd December 2005 under Section 351 of M.M.C. Act, 1888 without passing order after considering the reply filed by the Petitioner. The learned Advocate, however, opposed the prayer

for granting a limited protection as regards Order at Exh.H.

4. In view of the submissions made by the learned Advocate for the Respondent-Corporation, Advocate for the Petitioner seeks permission to withdraw this Petition with liberty to file a suit for challenging the order dated 22nd December 2005 (Exh.H to the Petition). He prays that a limited protection may be granted for few days to enable the Petitioner to file a civil suit and apply for appropriate interim order. In my view, the request made by the Advocate for the Petitioner is reasonable. 5. Hence, I pass the following order :

i) Writ Petition is dismissed as withdrawn with liberty to the Petitioner to file a civil suit for challenging the order dated 22nd December 2005(Exh.H).

ii) To enable the Petitioner to file a civil suit, no action shall be taken by the Respondent-Corporation on the basis of the order dated 22nd December 2005 (Exh.H) till Monday 2nd January 2006. It is made clear that the prayer for interim relief which may be made by the Petitioner in the suit will be decided by the concerned Court without being influenced by grant of limited protection by this Court.

iii) All contentions of both the parties as regards order dated 22nd December 2005 and notice dated 22nd December 2005 are expressly kept open.

iv) Parties to act upon an authenticated copy of this order.

(ABHAY S.OKA,J.)