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KANTA PRASAD D. PATEL

v.

MUNICIPAL CORPORATION OF GREATER BOMBAY AND ORS.

APRIL 15, 1996

B

[K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

C

*Unauthorised structure—Initially allowed to be retained—After five years notice issued for demolition—High Court holding that there was no evidence on record to show that the said structure was constructed prior to April 1, 1962 and hence cannot be permitted to be retained—Held there is no illegality in the order warranting interference.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7498 of 1996.

D

From the Judgment and Order dated 3.3.95 of the Bombay High Court in A. No. 565/92 in W.P. No. 1375 of 1988.

Sanjay Parikh for the Appellants.

B.N. Naik and D.N. Mishra for the Respondents.

E

The following Order of the Court was delivered :

Leave granted.

We have heard learned counsel on both sides.

F

This appeal by special leave arises from the order of the Division Bench of the High Court of Bombay in Appeal No. 565/92 made on March 3, 1995. The admitted facts are that the appellant claimed to have purchased the disputed site from one A.M. Patil in 1965 and constructed sheds thereon. He also alleged to have had a lease from him. On that basis, he claimed that the structure was existing prior to April 1, 1962. The respondents issued notice to the appellant for demolition. The Deputy Municipal Commissioner initially by order dated January 27, 1983 directed him to retain a shed admeasuring 30" x 30" but other structures were directed to be demolished. After 5 years, notice was issued to the appellant to demolish that shed. Calling the same in question, the appellant filed the

H

writ petition. In writ Petition No. 1375/88, the learned single Judge had held that the exercise of the power of review should be made *bona fide* within a reasonable time. After considerable lapse of time, power of review cannot be exercised. The Division Bench has set aside the order holding that there is no evidence on record to show that the appellant had constructed the above structure prior to April 1, 1962. Under those circumstances, the appellant could not be permitted to retain the structure which was illegally constructed.

It is sought to be contended for the appellant that the Additional Commissioner has no power to review the order passed by a subordinate officer on January 27, 1983 in the impugned order and, therefore, it is one of nullity. We find no force in the contention. It must be established as a fact that the appellant has title to the property and construction was made *bona fide* in compliance of lawful permission or prior to April 1, 1962. It is an admitted fact that even the lease deed does not contain any recital as regards the existence of any structure. Learned counsel sought to reply upon an order passed by the civil court and also the affidavit of the lessor filed in 1966 to show the existence of the shed. It would be obvious that the shed was constructed after April 1, 1962 as found by the High Court. Under those circumstances, the authority was rightly justified in exercising that power. We do not find any illegality in the order warranting interference.

The appeal is accordingly dismissed. No costs.

G.N.

Appeal dismissed.