

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

**WRIT PETITION (L) NO. 1622 OF 2016
WITH
NOTICE OF MOTION (L) NO. 407 OF 2016
IN
WRIT PETITION (L) NO. 1129 OF 2016
WITH
NOTICE OF MOTION (L) NO. 417 OF 2016
AND
NOTICE OF MOTION (L) NO. 407 OF 2016
IN
WRIT PETITION (L) NO. 1129 OF 2016
WITH
WRIT PETITION (L) NO. 1129 OF 2016**

Ranjit Deshmukh & Anr. .. Petitioners
versus
Municipal Corporation of Greater
Mumbai & Ors. .. Respondents

Mr. A. V. Anturkar – Senior Advocate with Mr. Vivek Shukla i/b. Shukla & Associates for Petitioners.

Mr. N. V. Walawalkar – Senior Advocate with Mr. H. C. Pimple for Respondent – MCGM.

Ms H. Y. Shah – AGP for State - Respondent in WPL 1622 of 2016.

Mr. A. H. Gokhale – AGP for State – Respondent No. 2 in WPL 1129 of 2016.

Ms Sharmila Deshmukh for Respondent No. 3.

**CORAM: V. M. KANADE AND
M. S. SONAK, JJ.**

DATE : 30 JUNE 2016

P.C.:

1] The petitioner no. 2 is a school established and administered by the society registered under the Societies Registration Act and

Bombay Public Trust Act. The grievance of the petitioner is that the respondent – Corporation has demolished part of the structure without giving proper opportunity to the petitioner. Mr. Anturkar, the learned senior counsel appearing for the petitioners submitted that initially a notice under section 53(1) of the MRTP Act was issued. The petitioners made a representation. However their representation was dismissed. The petitioners therefore filed an appeal under section 47 of the MRTP Act before the appellate authority. The appellate authority remanded the matter back to the Municipal Corporation with the directions that the controversy and dispute as to whether the construction in question was within 50 meters of the mangroves or not was to be decided after making enquiry. Mr. Anturkar, the learned counsel submitted that without following the directions given by the appellate authority, the Corporation issued a notice under section 488 read with section 68 of the BMC Act and demolished the structure within 24 hours of issuance of the said notice.

2] He submitted that the school has reopened after the summer vacation and since the toilet blocks have been demolished, the children and the management are facing huge inconvenience. He submitted that the petitioners be permitted to reconstruct the toilet block without prejudice to their rights and contentions and without claiming any equity. He submitted finally that the petitioners shall also give an undertaking that in the event petition filed by the petitioners is dismissed they shall on their own demolish the said reconstructed structure. On the other hand, Mr. Walawalkar, the learned senior counsel appearing on behalf of Corporation submitted that initially the toilet blocks were situate on the front side of the building as per the first sanctioned plan, thereafter the petitioners submitted a second plan which showed the toilet blocks on the rear side of the building.

He submitted that admittedly therefore the said toilet blocks are constructed not in accordance with the second sanctioned plan. He submitted that therefore Corporation was justified in demolishing the said toilet blocks. Mr. Anturkar however submitted that when the second plan was submitted, the petitioner society had already constructed a building in accordance with the first plan which was duly sanctioned. He submitted that therefore opportunity ought to have been given by the Corporation and directions given by the appellate authority while deciding the appeal under section 47 ought to have been complied by.

3] We have perused the order passed by the appellate authority in the appeal filed by the petitioner under section 47 of the said Act. The Hon'ble Minister had given a clear direction to the Corporation that a fresh enquiry should be held to find out whether the said construction of the toilet blocks was within distance of 50 meters of the mangroves. From the correspondence it appears that one of the officer of the Corporation expressed an opinion in writing that the order passed by the Minister is not binding on the Corporation and thereafter proceeded to give a direction to demolish the toilet blocks. In our view, the Corporation has acted in a high handed manner and has not complied with the directions given by the Hon'ble Minister who had given a direction under section 47 of the said Act. The petitioner management is running a school in which approximately 300 students are taking education. As a result of demolition of the toilet blocks obviously great inconvenience is caused to the students. We are therefore of the view that the petitioners should be permitted to reconstruct the toilet blocks and classrooms without prejudice to their rights and contentions. The petitioners shall however not claim any equity and shall also give an undertaking that in the event petition filed

by the petitioners is dismissed, they shall on their own demolish the said reconstructed structure. All contentions of both the parties are kept open. The Corporation to file their reply and give explanation to this Court as to how Corporation and its officers have demolished the said structure when an enquiry as directed by the Minister had not even commenced. Affidavit to be filed within two weeks. In the event any adverse order is passed in the enquiry which is directed to be held by the appellate authority, the said order shall not be implemented for a period of two weeks. The order of *status quo* is modified accordingly. Stand over to 14th July 2016.

(M. S. SONAK, J.)

(V. M. KANADE, J.)