

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2053 OF 2015

Disha Education Society

.. Petitioner

Versus

**The Commissioner of Thane Municipal
Corporation or its Competent Officer**

.. Respondent

Shri. R. S. Datar i/by Shri. Dushyant S. Pagare, for the Petitioner.

Shri. Mandar Limaye, for the Respondent.

CORAM : R.M. SAVANT, J.

DATE : 27th FEBRUARY, 2015

PC.

1. The Writ Jurisdiction of this Court is invoked against the order dated 21.02.2015 passed by the Learned 5th Joint Civil Judge, Senior Division, Thane, by which order the application Exh.21 came to be rejected.

2. The suit structure is a building having two wings with ground plus two on one side and ground plus three on other side. It appears that in the said suit structure a school is presently being run from Standard 1st to Standard 10th and presently there are about 1830 students who are pursuing education in the said school. The structure in question is a subject matter of notice issued under Section 260(1) of the Maharashtra

Municipal Corporation Act, 1949. It is alleged that the said structure is unauthorized and on account of the fact that it has been constructed without permission.

3. Pursuant to the said notice a hearing was held, wherein the representatives of the Petitioner were present. However, pertinently no documents to show that the structure is authorized were produced by the said representatives. An order has been passed by the Respondent No.1 Municipal Corporation under Section 260(2) pursuant to the said hearing. It is the case of the Petitioner that the said order was not served until 21st February, 2015. However, the said fact is disputed by the Learned Counsel for the Respondent No.1 Shri. Mandar Limaye. Be that as it may, since the said order has now been annexed to the above Petition, it is not necessary to go into the said aspect. The order passed by the Respondent No.1 Municipal Corporation under Section 260(2) is pursuant to the directions which were issued by the Division Bench of this Court A. S. Oka and G. S. Kulkarni, JJ by order dated 12th September, 2014 in Writ Petition No.7498 of 2014. The Trial Court has rejected the said application for maintenance of status-quo till the application for temporary injunction Exh.5 is heard taking into consideration the aforesaid facts namely the order passed by a Division Bench of this Court, and that an order under Section 260(2) has already been passed. It is an undisputed position that the application for

temporary injunction Exh.5 is pending. The Learned Counsel for the petitioner states that the Petitioners are the owners of the land in question on which the structure is situated and that the Petitioners would file an application for regularization of the structure with the Respondent within one week from date. In view of the fact that a school is in existence in the said structure, wherein 1830 students are pursuing education from Standard 1st to Standard 10th and since the Petitioner is desirous of making an application for regularization, in my view it would be just and proper to direct the Respondent No.1 Municipal Corporation not to take action against the structure in question for a period of 10 days i.e. up to 9th March, 2015. In the event the application for regularization is not filed the instant order would come to an end on 9th March, 2015. In the event an application is filed, it is for the competent authority to consider the same on its own merits and in accordance with law. With the aforesaid directions, the Writ Petition is disposed of.

[R.M. SAVANT, J]