

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
**WRIT PETITION NO.2520 OF 2013**

Mohanlal Jivabhai Gohil & Ors. .... Petitioners

Vs.

Municipal Corporation of Greater  
Mumbai & Others .... Respondents

**WITH**

**NOTICE OF MOTION NO.97 OF 2014  
IN  
WRIT PETITION NO.2520 OF 2013**

Mohanlal Jivabhai Gohil & Ors. .... Applicants

*In the matter between*

Mohanlal Jivabhai Gohil & Ors. .... Petitioners

Vs.

Municipal Corporation of Greater  
Mumbai & Others .... Respondents

**AND**

**CONTEMPT PETITION [LODGING] NO.113 OF 2014  
IN  
WRIT PETITION NO.2520 OF 2013**

Mohanlal Jivabhai Gohil & Ors. .... Petitioners

Vs.

Municipal Corporation of Greater  
Mumbai & Others .... Respondents

Mr. A.A. Kumbhakoni i/b Ms Kanchi K. Joshi h/f  
Mahesh Jani & Co. for the Petitioners in the WP and  
the Contempt Petition and for the Applicants in NM.

Ms Shobha Ajitkumar for the Respondent-BMC.  
Ms Uma Palsule-Desai, AGP, for the Respondent-  
State.

**WITH**

**WRIT PETITION NO.882 OF 2015**

Kishor Ramji Tank

.... Petitioner

Vs.

The Commissioner,  
Municipal Corporation, Mumbai  
& Anr.

.... Respondents

Mr. A.Y. Sakhare, Senior Counsel i/b Mr. Mahadeo  
A. Choudhari for the Petitioner.  
Ms Shobha Ajitkumar for the Respondent-BMC.

**CORAM:** A.S. OKA &  
REVATI MOHITE DERE, JJ.

**DATED:** AUGUST 03, 2015

**P.C:**

1. In Writ Petition No.2520 of 2013, the substantive challenge is to the notice dated 10-8-2013, issued by the Mumbai Municipal Corporation in exercise of powers under Section 55 of the Maharashtra Regional and Town Planning Act, 1966 (for short, "the MRTP Act"). Our attention is invited to the

reply filed by the petitioners to the said notice. Various contentions have been raised in the said reply, including the contention that the petitioners are the tenants in respect of the land in question and the structures in respect of which notice has been issued are in existence for several years. We have perused the reply submitted by the petitioners through their Advocate on 12-8-2013. In paragraph 3 of the reply, it is contended that the petitioners are in possession of documentary evidence to show that the sheds subject-matter of the notice were in existence for a considerably long time. Reliance is also placed on a letter dated 7-5-1991 which, according to the petitioners, shows the existence of the sheds.

2. As far as Writ Petition No.882 of 2015 is concerned, the challenge is again to the notice issued under Section 55 of the MRTP Act which is dated 26-3-2014. The learned Senior Counsel appearing for the petitioner relied upon the 7x12 extract in respect of the land on which the structures subject-matter of the impugned notice are standing. His contention is

that right from the year 1943-1944, in the cultivation column, the name of the predecessor in-title of the petitioner appears and there is a reference to existence of a structure in the cultivation column. He invited our attention to the reply dated 29-3-2014. He submitted that in the said reply it is contended that there are documents in possession of the petitioner to show that the structures were in existence in the year 1960.

3. In both the petitions, reliance is sought to be placed on old documents showing that the structures which are the subject-matter of the impugned notices under Section 55 of the MRTP Act were allegedly in existence for a considerably long time. Sub-section (1) of Section 55 confers power on the Planning Authority of removal of unauthorised temporary development. Considering the fact that the reply submitted by the petitioners to both the impugned notices and considering the stand taken in the reply that the structures were in existence for last several years, an opportunity deserves to be granted to the petitioners to produce the documents before the Designated

Officer of the concerned Ward. Considering the stand taken in the reply, the Designated Officer will have to look into the documents produced by the petitioners and will have to pass an order on the issue whether the petitioners have carried out any unauthorised temporary development, as alleged in the impugned notices.

4. We must note here that as far as the structures subject-matter of the impugned notice in Writ Petition No.2520 of 2013 are concerned, it appears that a notice was issued by the Municipal Corporation under Section 354A of the Mumbai Municipal Corporation Act, 1888. We make it clear that we have not dealt with the merits of the said notice as the same is not the subject-matter of challenge in the writ petition.

5. Hence, we dispose of the petitions by passing the following order:

**ORDER**

(i) We direct the petitioners or their representatives to

appear before the Assistant Municipal Commissioner of M-East Ward of the Mumbai Municipal Corporation on 24-8-2015, at 11:00 a.m.. The petitioners shall produce the documents relied upon by them before the said Officer on the said date;

(ii) After considering the said documents and after giving an opportunity of being heard to the petitioners, the Assistant Commissioner shall pass orders recording reasons in brief on the question whether the work of erecting the structures subject-matter of the impugned notices amounts to temporary development within the meaning of sub-section (1) of Section 55 of the MRTP Act;

(iii) Till the date of communication of the orders to the petitioners, status quo as of today shall be maintained by the petitioners and the Mumbai Municipal Corporation in respect of the structures subject-matter of the impugned notices;

(iv) If the orders passed be adverse to the petitioners, the

order of status quo will continue to operate for a period of one month from the date of communication of the orders to the petitioners;

(v) All contentions on merits are kept open;

(vi) The petitions are disposed of in above terms.

(vii) In view of disposal of Writ Petition No.2520 of 2013, Notice of Motion No.97 of 2014 and Contempt Petition (Lodging) No.113 of 2014 do not survive and they accordingly stand disposed of.

5. All concerned to act upon the authenticated copy of this order.

(REVATI MOHITE DERE, J.)

(A.S. OKA, J.)