

WRIT PTITION (L) NO.1355 OF 2015

2. Learned Senior Counsel for the Petitioner has pointed out that the alleged offending structure belongs to the Petitioner and they are in occupation of the subject property since 1972-73. It is noticed that prior to the issuance of the notice dated 13 March 2015 under section 351 of the MMC Act to M/s.Saldanha Realty & Infrastructure Pvt.Ltd., a notice under section 488 was issued to the Petitioner-Paper Box Company Ltd. for inspection and measurement of the premises. However, despite the said notice, no notice thereafter under section 351 has been issued to the Petitioner nor the Petitioner has been heard before the passing of the impugned order. Learned Senior Counsel for the Petitioner has also drawn my attention to the electricity bill in the name of the Petitioner, annexed at page 35 of the Petition, for the month of March 2015.

3. Learned counsel on behalf of the Respondent-Corporation does not dispute the fact that the Petitioner has not been served any notice under section 351 of the MMC Act and is not in a position to rebut the averments of the Petitioner that the offending structure belongs to the Petitioner and that the Petitioner is in occupation of the land wherein the offending structure exists. She however submits that in view of the judgment of the learned single Judge of this Court in Writ Petition No.2243 of 2013 and other connected matters, the Petitioner is required to file a suit in the Bombay City Civil Court.

5. Inasmuch as, there is a clear violation of principles of natural justice, I am inclined to entertain the Petition.

6. Considering the facts and circumstances of the case, in my view, the following order would meet the ends of justice:

- (i) The impugned order dated 29 April 2015 is quashed and set aside.
- (ii) It would be open for the Respondent-Corporation to issue a fresh notice under section 351 of the MMC Act to the Petitioner and the Petitioner shall be heard in accordance with law, prior to passing any order on the basis of the said Notice.

7. The Petition is disposed of in the aforesaid terms. No order as to costs.

(A.A. SAYED, J.)

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