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

**NOTICE OF MOTION (LODGING) NO.447 OF 2015
IN
PUBLIC INTEREST LITIGATION NO. 45 OF 2012**

Ramzanali Shaikh English School ...Applicant

IN THE MATTER BETWEEN

Ali Asgar Mohammed Tahsildar ...Petitioner

Versus

The State of Maharashtra & Ors. ...Respondents

Mr. Tushar Gujjar with Mr. Ameet Mehta i/b Solicis Lex for the
Applicant/Respondent No.5.

Mr. Sushil Upadhye and Mr.Vikas Singh Goor i/b Mr. Ashok M.
Saraogi for the Petitioner.

Mr. Nikhil Dhoke with Ms. Vaishali Raghuwanshi and Ms. Anisha
Singh for the Respondent Nos. 4, 9, 10 and 14

Mr.Vijay Pande i/b Ms.Jyoti Pandey, for the Respondent No.7.

Mr.Ameet Mehta a/w Ms.Dipti Shah a/w Ms.Pratiksha Shetty, for the
Respondent No.13.

Mr. J. S. Saluja, A.G.P for the Respondent-State

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

DATED : 5th AUGUST, 2015.

P.C.

1. Heard the learned counsel appearing for the Applicant/Respondent no.5. It is not in dispute that the School of the Respondent no.5 is not situated on a public property. However, it is pointed out that for illegal construction made by the School, a notice has been issued by the Mumbai Municipal Corporation under Section 351 of the Mumbai Municipal Corporation Act, 1888. The learned counsel appearing for the respondent no.5 on instructions states that respondent no.5 desires to apply for regularization of the construction, which is the subject matter of the said notice under Section 351 of the Mumbai Municipal Corporation Act, 1888. We accept the said statement.

2. As the respondent no.5 is running a school in which students are studying, a reasonable time deserves to be granted to the respondent no.5 to make an application for regularization. The very fact that the respondent no.5 has agreed to apply for regularization shows that the respondent no.5 has accepted that the construction of the building which is the subject matter of the said notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 is not legal and the same has been constructed

without obtaining the permission of the Competent Authority. Therefore, further proceedings on the basis of the notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 shall not proceed till the disposal of the application for regularization.

3. Accordingly, we dispose of the Notice of Motion by passing the following order :-

ORDER

- i) Notice of Motion is made absolute in terms of prayer clause (a) ;
- ii) It will be open for the respondent no.5 to make an application for regularization of the construction, which is the subject matter of the said notice under Section 351 of the Mumbai Municipal Corporation Act, 1888, within a period of three months from today. Such application shall be made through a Licensed Architect/ Surveyor in prescribed format ;
- iii) If such application is made within the stipulated period of three months, the Mumbai Municipal Corporation shall decide the same in accordance with law within a period of two months from the date on which the application is made ;
- iv) The order passed on the application shall be communicated to the respondent no.5 or to the Licensed Architect/Surveyor of the

respondent no.5 ;

- v) Till the date of communication of the said order to the respondent no.5 or the Licensed Architect/Surveyor, whichever is earlier, the above action of demolition shall not be taken by the Mumbai Municipal Corporation ;
- vi) If the order passed on the application for regularization be adverse to the respondent no.5, the action of demolition shall not be taken by the Mumbai Municipal Corporation, for a period of eight weeks from the date on which the order is served to the respondent no.5 or to the Licensed Architect/ Surveyor, whichever is earlier ;
- vii) On the failure of the respondent no.5 to make an application for regularization within a period of three months from today, on expiry of the said period of three months, it will be open for the Mumbai Municipal Corporation to take action of demolition in accordance with law ;
- viii) We make it clear that all contentions on merits of the regularization application are expressly kept open ;
- ix) Notice of Motion is accordingly disposed of.

(REVATI MOHITE DERE,J.)

(A.S. OKA,J.)