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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 2828 OF 2015

Mr.Navin Maurice Tauro .. Petitioner

Vs.

The State of Maharashtra & anr. .. Respondents

Shri Vincent D'Silva, for the Petitioner.
Shri Vinod Mahadik, for Respondent No.2 – B.M.C.

CORAM : A.S. OKA & VL. ACHLIYA, JJ
DATED : 01st OCTOBER 2015

P.C. :

- . Not on board. Taken on board.
2. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the second respondent. The challenge in this Petition under Article 226 of the Constitution of India is to the notice dated 03/09/2015 issued under section 55 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'M.R.T.P Act'). The submission of the learned counsel appearing for the petitioner is that what is alleged in the notice is not covered by the temporary development under M.R.T.P Act and in any case, section 55 will have no application.
3. We have perused the photographs annexed to the Petition. The learned counsel appearing for the petitioner states that

the petitioner will submit a detailed reply to the impugned notice within a period of four weeks from today.

4. Considering the nature of alleged unauthorised temporary development, this a fit case where the Municipal Corporation will have to decide whether the alleged offending work is a development of temporary nature covered by sub-section (1) of section 55 of M.R.T.P Act. This adjudication will have to be made in the light of sub-section (2) of section 55 of the M.R.T.P Act. Accordingly, we dispose of the Petition by passing following order.

- (i) We direct the petitioner to file a detailed reply to the impugned notice on or before 30/10/2015. If the reply is not filed within the stipulated time, it will be open for the second respondent - Mumbai Municipal Corporation to take action in terms of the impugned notice;
- (ii) If the reply is filed, after considering the reply and after considering the documents which may be produced by the petitioner, the appropriate officer of the Mumbai Municipal Corporation shall decide whether the work alleged in the impugned notice amounts to development of a temporary nature. A copy of the order passed shall be served to the petitioner;
- (iii) Till the date of the service of the order on the petitioner, no action shall be taken on the basis of the notice dated 03/09/2015. In the event the order passed be adverse to the petitioner, this limited protection shall continue for a period of

one month from the date on which the order is served on the petitioner;

- (iv) All the contentions of the parties are kept open;
- (v) The Petition is disposed of in the aforesaid terms.

(VL. ACHLIYA, J)

(A.S.OKA, J)

CERTIFICATE

**Certified to be true and correct copy of the original signed
Judgement/Order.**