

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 2892 OF 2015

Bharat K. Shah & Ors.

.....Plaintiffs

: V/S :

The Assistant Commissioner & Ors.

.....Defendants

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Ms. Armin Wandarewalla i/by. Ms. Sutapa Saha, Advocate for the petitioners.

Ms. Tejali Mastakar, Advocate for BMC.

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Coram :- Smt. R.P. SondurBaldota, J.

7th October, 2015.

P.C. :-

. Mentioned. Not on board. Production granted at 3.00 p.m. in view of urgency.

1). This petition challenges the final order passed by the Assistant Engineer (B & F) 'D' Ward, (Designated Officer II), on the notice issued under Section 351 of the Mumbai Municipal Corporation Act (for short "the MMC Act") alleging unauthorised construction of a cabin of the specifications mentioned in the notice. Ms. Wandrewalla, learned Advocate appearing for the petitioner states that the Corporation had given seven days time to the petitioner to remove the structure and that today is the seventh day. She apprehends that the officers of the respondent may come on any day to remove the structure. She submits

that the structure has been put up as a cabin to protect the alternate source of power supply.

2). Ms. Mastakar, the learned Advocate appearing for the respondent, points out that by the order dated 10th April, 2014 passed in **Writ Petition No. 2243 of 2013 (Mr. Yogesh Megaji Gada V/s. The Municipal Corporation of Greater Mumbai & anr.)**, this Court has held that action by the Mumbai Municipal Corporation under Section 351 of the MMC Act is required to be challenged by a civil suit and not by filing petition under Article 226 of the Constitution of India. She submits that, therefore, the petition is not maintainable and the petitioner needs to file a civil suit, if he so desires.

3). Ms. Wandrewalla, then seeks to withdraw the petition to enable the petitioner proposes to file a civil suit to challenge the impugned order. She, however, requests that the structure in question be protected for a reasonable period, so that the petitioner can serve mandatory statutory notice upon the respondent before filing the suit. The petition is allowed to be withdrawn. The respondent shall not proceed against the structure in question for a period of 6 weeks from today.

2). The petitioner to get the petition numbered for statistical purpose.

(SMT. R.P. SONDURBALDOTA, J)

CERTIFICATE

. Certified to be true and correct copy of the original signed order.