

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NOS. 964/2015, 965/2015, 967/2015 to
1003/2015, 45/2016, 46/2016, 49/2016 to 56/2016
AND 60/2016

WRIT PETITION NO. 964/2015

Smt. Ratna Shattri, major of
age, residing at House No.6-2-
49/B, Near Ice Factory, Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa. ... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa. ... Respondent

WRIT PETITION NO. 965/2015

Nagawwa Johny Pereira, major
of age, residing at House
No.89 Near Ice Factory, Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa. ... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa. ... Respondent

WRIT PETITION NO. 967/2015

Mahadev Yellavva Harijan,
major of age, residing at
House No. 66, Near Basaveshwar
Temple, Near Ice Factory, Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa. ... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 968/2015

Bibijan Rehmutterulla Khan, (since
deceased through her son), Mr.
Kalendar Rehmutterulla Khan,
major of age, residing at
House No.6/2/35, 240 (new) Near
Ice Factory, Near Salgaoncar
Qtrs, Katem, Baina, Vasco da
Gama, Mormugao, Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 969/2015

Ramesh Chalwadi, major of age,
residing at House No.238/6,
(299 Old), Near Ice Factory,
Near Salgaoncar Qtrs, Katem,
Baina, Vasco da Gama, Mormugao,
Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 970/2015

Lalsab Nadaf, major of age,
residing at House No.71/G1-
55, 249 (old), Near Basaveshwar
Temple, Near Ice Factory, Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 971/2015

Yellappa Harijan, major of
age, residing at House No.
261 Near Ice Factory, Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 972/2015

Smt. Dilshad Begum Shaikh,
major of age, residing at
House No.6/2/35, Near Ice
Factory, Near Salgaoncar Qtrs,
Katem, Baina, Vasco da Gama,
Mormugao, Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 973/2015

Siddava Chandra Totad, major
of age, residing at House
No.149 Near Ice Factory, Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 974/2015

Yeshwant Kenchappa Bisnal,
major of age, residing at
House No. 6/2/34, 325(new),
Near Ice Factory, Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 975/2015

Hanumawa Chalwadi, major of
age, residing at House
No.7/92(2), Near Basaveshwar
Temple Near Ice Factory, Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 976/2015

Girija Yamnappa Gotanji, major
of age, residing at House
No.7/94(1), Near Ice Factory,
Near Salgaoncar Qtrs, Katem,
Baina, Vasco da Gama,
Mormugao, Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 977/2015

Laxmi Ganati, major of age,
Residing at House No.244
(new), Near Ice Factory, Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 978/2015

Chandappa Madar, major of age,
residing at House No.6/2/43,
Near Ice Factory , Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 979/2015

Haralappa Harijan, major of
age, residing at House
No.6/2/43, Near Ice Factory,
Near Salgaoncar Qtrs, Katem,
Baina, Vasco da
Gama, Mormugao, Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 980/2015

Hanumant Madar, major of age,
residing at House No.294, Near
Ice Factory, Near Salgaoncar
Qtrs, Katem, Baina, Vasco da
Gama, Mormugao, Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 981/2015

Chandrappa Holler, major of
age, residing at House No.
190, Near Basaveshwar Temple,
Near Ice Factory, Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 982/2015

Basappa Harijan, major of age,
residing at House No.14, Near
Ice Factory, Near Salgaoncar
Qtrs, Katem, Baina, Vasco da
Gama, Mormugao, Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 983/2015

Shakhavva Harijan, major of
age, residing at House No.
Near Ice Factory , Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 984/2015

Shree. Laxmi Temple, through
its President, Shri.
Yelgurdappa B. Chawadi, major
of age, Near Ice Factory, Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 985/2015

Hiranna M. Bullappa, major of
age, residing at House No.398,
Near Basaveshwar Temple Near
Ice Factory, Near Salgaoncar
Qtrs, Katem, Baina, Vasco da
Gama, Mormugao, Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 986/2015

Naresh Phadte, major of age,
residing at House No.
16(old)/187(new), Near Ice
Factory, Near Salgaoncar Qtrs,
Katem, Baina, Vasco da Gama,
Mormugao, Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 987/2015

Yelgurappa B. Chalwadi, major
of age, residing at House No.
276, Near Basaveshwar Temple,
Near Ice Factory, Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 988/2015

Ghanasham Kahar, major of age,
residing at House No.28(old),
243/4, Near Ice Factory, Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 989/2015

Elemina Almeida Vaz, major of
age, residing at House
No.71/293, Near Basaveshwar
Temple, Near Ice Factory, Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 990/2015

Maniklal R. Saroj, major of
age, residing at House
No.71/CL/32, Near Basaveshwar
Temple, Near Ice Factory, Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 991/2015

Smt. Gauri Kassar (since
deceased), through her
daughter in law, Smt. Sukanti
Kasar, wife of late Manjunath
Kassar, major of age, residing
at House No.6/2/33, Near Ice
Factory, Near Salgaoncar Qtrs,

Katem, Baina, Vasco da Gama,
Mormugao, Goa. ... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa. ... Respondent

WRIT PETITION NO. 992/2015

Yallawwa Harijan, major of
age, residing at House No.64
Near Ice Factory, Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa. ... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa. ... Respondent

WRIT PETITION NO. 993/2015

Mumtaz Bi Hawaldar, major of
age, residing at House No.
6/2/68/A, Near Basaveshwar
Temple Near Ice Factory, Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa. ... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa. ... Respondent

WRIT PETITION NO. 994/2015

Smt. Renuvva Kholkar, major of
age, residing at House No.311,
Near Ice Factory, Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa. ... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 995/2015

Yellappa B. Chalwadi, major of
age, residing at House
No.276/71, Near Ice Factory,
Near Salgaoncar Qtrs, Katem,
Baina, Vasco da Gama,
Mormugao, Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 996/2015

Allabaksh Pathan, major of
age, residing at House
No.6/2/49(D),78 Near Ice
Factory, Near Salgaoncar Qtrs,
Katem, Baina, Vasco da Gama,
Mormugao, Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa.

... Respondent

WRIT PETITION NO. 997/2015

Venkatesh Bullappa, major of
age, residing at House No.
398, Near Ice Factory, Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa.

... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa. ... Respondent

WRIT PETITION NO. 998/2015

Chanavva R. Harijan, major of
age, residing at House
No.6/2/53,359(old), Near
Basaveshwar Temple, Near Ice
Factory, Near Salgaoncar Qtrs,
Katem, Baina, Vasco da Gama,
Mormugao, Goa. ... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa. ... Respondent

WRIT PETITION NO. 999/2015

Tipavva Vadhar, major of age,
residing at House No. 142,
Near Basaveshwar Temple Near
Ice Factory, Near Salgaoncar
Qtrs, Katem, Baina, Vasco da
Gama, Mormugao, Goa. ... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa. ... Respondent

WRIT PETITION NO. 1000/2015

Gangaya Dabimath, major of
age, residing at House No.106,
Near Ice Factory, Near
Salgaoncar Qtrs, Baina, Vasco
da Gama, Mormugao, Goa. ... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa. ... Respondent

WRIT PETITION NO. 1001/2015

Devappa Madar, (since deceased)
through his wife, Mrs. Masawwa
Madar, major of age, residing
at House No. 6/2/50A, Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa. ... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa. ... Respondent

WRIT PETITION NO. 1002/2015

Ram Krishna Raut, major of
age, residing at House No.96
(1), Near Ice Factory, Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa. ... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa. ... Respondent

WRIT PETITION NO. 1003/2015

Renuka Mardi, major of age,
residing at House No.81,
67(old), Near Ice Factory,
Near Salgaoncar Qtrs, Katem,
Baina, Vasco da Gama,
Mormugao, Goa. ... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa. ... Respondent

WRIT PETITION NO. 45/2016

Smt. Magdalina Cardoz Fonseca,
major of age, residing at
House No. 106, 108(new), Near
Ice Factory, Near Salgaoncar
Qtrs, Katem, Baina, Vasco da
Gama, Mormugao, Goa. ... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa. ... Respondent

WRIT PETITION NO. 46/2016

Parushram Naik, major of age,
residing at House No.164, Near
Basaveshwar Temple, Near Ice
Factory, Near Salgaoncar Qtrs,
Katem, Baina, Vasco da Gama,
Mormugao, Goa. ... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa. ... Respondent

WRIT PETITION NO. 49/2016

Shri Rangappa, Kadhimari,
major of age, residing at
House No. 71/229, 508(old),
Near Ice Factory, Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa. ... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa. ... Respondent

WRIT PETITION NO. 50/2016

Shantavva Madar, major of age,
residing at House No. 71/A(C-
40-48(1)(old), Near Ice
Factory, Near Salgaoncar Qtrs,
Katem, Baina, Vasco da Gama,
Mormugao, Goa. ... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa. ... Respondent

WRIT PETITION NO. 51/2016

Smt. Kamala Devi Shukla, major
of age, residing at House No.
95, Near Ice Factory, Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa. ... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa. ... Respondent

WRIT PETITION NO. 52/2016

Smt. Somavva Chalwadi, major
of age, residing at House No.
6/2/41, Near Basaveshwar
Temple, Near Ice Factory, Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa. ... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa. ... Respondent

WRIT PETITION NO. 53/2016

Shri Balappa Chalwadi, major
of age, residing at House No.
111, Near Ice Factory, Near
Salgaoncar Qtrs, Katem, Baina,
Vasco da Gama, Mormugao, Goa. ... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa. ... Respondent

WRIT PETITION NO. 54/2016

Shri Bassapa Chalwadi, major
of age, residing at House No.
6/2/49/D(new), 235(old), Near
Ice Factory, Near Salgaoncar
Qtrs, Katem, Baina, Vasco da
Gama, Mormugao, Goa. ... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa. ... Respondent

WRIT PETITION NO. 55/2016

Laxman Gurbal, (since deceased)
through his son, Mr. Hulgappa
Gulbal, major of age, residing
at House No. 1/63, Near Ice
Factory, Near Salgaoncar Qtrs,
Katem, Baina, Vasco da Gama,
Mormugao, Goa. ... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa. ... Respondent

WRIT PETITION NO. 56/2016

Chandravva Rathod (since
deceased), Ms. Kushma Gangappa
Rathod, major of age, residing
at House No.265, near
Basaveshwar Temple, Near Ice
Factory, Near Salgaoncar Qtrs,
Katem, Baina, Vasco da Gama,
Mormugao, Goa. ... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa. ... Respondent

WRIT PETITION NO. 60/2016

Mr. Pirappa Harijan, (since
deceased) through his son Mr.
Hanumappa Harijan, major of
age, residing at House No.
6/2/49/F, Near Ice Factory,
Near Salgaoncar Qtrs, Katem,
Baina, Vasco da Gama,
Mormugao, Goa. ... Petitioner

Versus

The Chief Officer, Mormugao
Municipal Council, with office
at Municipal Council Building,
Mormugao - Goa. ... Respondent

Mr. J.E. Coelho Pereira, Senior Advocate with Mr.
V. Braganza, Advocate for the Petitioners.

Mr. S.D. Padiyar, Advocate for the Respondent.

CORAM:- C. V. BHADANG, J.

RESERVED ON:- 22nd AUGUST, 2016

PRONOUNCED ON:- 29th AUGUST, 2016

JUDGMENT:

Rule in all the petitions. The learned Counsel for the respondent waives service. Heard finally by consent of the parties.

2. All these petitions involve a challenge to the notice of demolition, issued by the Mormugao Municipal Council of the structures in occupation of the petitioners. The petitions involve common and connected questions. As such, all these petitions are being disposed of by this common judgment.

3. The facts necessary for the disposal of these petitions may be stated thus:

That Shri Anand Chandra Bose, Chairman and Managing Director of M/s. Anand Bose Constructions Pvt. Ltd. had lodged a complaint with the Mormugao Municipal Council on 18.03.2010, complaining about

the illegal construction in property under Chalta No.38 of P.T. Sheet No.153, Vasco-da-Gama. On the basis of the said complaint, the Municipal Council issued individual notices under Section 184 of the Goa Municipalities Act, 1968 (the Act, for short) in June 2010. It further appears that the Municipal Council conducted spot inspection and a document of transgression was prepared, which showed existence of illegal structures in the said land. This was followed by a letter being issued to the petitioners for personal hearing. The petitioners appeared and filed reply contending that the subject structures were about 35 to 40 years old. It was contended that the petitioners were possessing election cards, electricity bills and house tax receipts, which showed their long standing possession of the suit structures.

4. The competent authority of the Municipal Council after considering the documents produced and hearing the petitioners, found that the documents were of recent origin and the

petitioners were unable to substantiate the claim that the structures were about 35 to 40 years old. It was further found that no survey plan was produced showing the existence of the structures. The Municipal Council also found that there was no permission/license issued for construction of the said structures. In that view of the matter, by separate orders dated 20.12.2012 and 18.01.2013, the Municipal Council directed the petitioners to demolish the said structures, within a period of 15 days, failing which action of demolition was to be undertaken.

5. The petitioners challenged the action of the Municipal Council before the Municipalities Appellate Tribunal (Tribunal, for short) by filing separate appeals.

6. The Tribunal by Judgment and order dated 23.02.2015 has dismissed the appeals.

7. It may be mentioned at this stage that some of the petitioners had approached the State Government, against the order of the Tribunal by filing Second Appeals under Section 184 (D) of the said Act. However, prior to the filing of the appeals, this Court had declared the said provision as unconstitutional. In that view of the matter, the appeals were not entertained. The petitioners are thus, challenging the order of the Tribunal, in these petitions, under Article 227 of the Constitution of India.

8. I have heard Shri Pereira, the learned Senior Counsel for the petitioners and Shri Padiyar, the learned counsel appearing for the respondent. With the assistance of the learned Counsel for the parties, I have perused the impugned order passed by the Municipal Council as well as the Tribunal.

9. The learned Senior Counsel for the petitioners has raised two contentions. It is

submitted that invocation of powers under Section 184 of the Act by the Municipal Council was bad, as the subject structures were "existing structures", and were assessed for the purpose of house tax. The contention is that, Section 184 of the Act can be invoked only where the Municipal Council finds that a person has begun new construction, without valid license. Secondly, it is contended that the impugned order passed by the Municipal Council are in breach of the principles of natural justice. It is contended that the subject structures are in a private property. The learned Senior Counsel submits that the petitioners have applied for regularisation of the structures, in view of the Goa Regularisation of Unauthorized Construction Ordinance, 2016 (Ordinance of 2016, for short). The petitioners reserve liberty to pursue the same.

The learned Senior Counsel, has made an alternate submission that in the event, this Court is not inclined to interfere, reasonable time may be granted to the petitioners to vacate the

structures, as the petitioners are coming from the lower strata of the society and are staying in the subject structures along with their families, which includes school going children.

10. On the contrary, the learned counsel for the respondent has supported the impugned order. It is submitted that both the authorities have concurrently found that the documents produced by the petitioners were of recent origin and were not sufficient to substantiate the claim of the petitioners that they were occupying the subject structures for a period of 35 to 40 years. It is submitted that the petitioners are neither claiming, nor have produced any licence/permission for erection, of the subject structures. It is submitted that the Municipal Council had issued show cause notice, to which the petitioners had filed reply and produced documents and were personally heard. The learned counsel submits that the petitions are without any merit.

11. I have carefully considered the rival circumstances and the submissions made.

12. At the outset, it is not in dispute that the petitioners have not obtained any permission/license for construction of the structures. Thus, admittedly, the structures are without any permission/license from the Municipal Council. The contention is that under Section 184(8) of the Act, the Municipal Council can take action only where a person "begins any construction of a building". In other words, it is contended that the same would not apply to buildings/structures of which, the construction is complete. The Tribunal has noticed the provisions of Section 184 of the Act and has held that the section has to be read as a whole. The Tribunal has found that Section 184(2) mandates obtaining of permission for construction, while Section 184(8) speaks about construction already made, when the demolition notice is issued. It has been found that there is a provision for regularisation

of the construction. In that view of the matter, the Tribunal has found that the argument that action can be initiated only at the beginning of the construction, cannot be accepted as in the opinion of the Tribunal "in that case, there would not be any provision for regularisation of the constructed structure".

Apart from the reasoning as articulated by the Tribunal, it would be preposterous to assume that under Section 184(8), action can be taken only when the construction begins and not thereafter. No provision can be read or interpreted in a manner, which would lead to absurdity and a situation which is incongruous. It is not possible to envisage that action against illegal construction can be taken only till, the construction is complete and not thereafter. Such an interpretation would not only be against the letter and spirit of the Act, but would tend to put premium on the act of a person, who would complete the illegal construction, before it could be noticed by the Municipal Council. Such an

interpretation to my mind cannot be accepted and has been rightly negated by the Tribunal.

13. The next contention is that the subject structures are about 35 to 40 years old and are assessed for the purpose of house tax. It is contended that the electricity connection as also water connection have been released in respect of the subject structures. The Tribunal has found that under Section 184(12) of the Act, there is no time limit for the Chief Officer to inspect any such work. The Tribunal has found that according to the petitioners, the structures came into existence somewhere in the year 1975, while the Act came into force in 1968. Thus, it was necessary for the petitioners to have obtained the necessary permission/license.

14. As noticed earlier, admittedly, the petitioners are not having any such license/permission. The Municipal Council as well as the Tribunal has appreciated the material

produced and has found that the same is not sufficient to substantiate the claim that the structures are about 35 to 40 years old. The learned Senior Counsel for the petitioners was unable to point out that the said finding of fact recorded by the Authority/Tribunal below, is perverse, as not being borne out of record.

15. The compilation filed on record shows that the petitioners were allowed to file reply and produce documents and were heard. Thus, the contention that the impugned order suffers from breach of principles of natural justice cannot be accepted.

16. Insofar as the assessment of structures for house tax is concerned, the Tribunal has placed reliance on the decision in the case of **Jagdish Amritlal Karia and Another Vs. Bombay Municipal Corporation of Greater Bombay and Another**, 2001(4) Bom.C.R. 673, in which it has been held thus:

"Chapter VIII deals with the municipal taxes. Section 142 to 145 thereof deals with the property taxes leviable, Section 146 to 148 deals with the liability to pay property taxes, Section 149 to 155 deals with the value of property assessable to the property tax is to be made. It is clear that the Sections 140, 143, 154 and 155 use the words "building and/or, land" no section or provision is pointed out which orders that the buildings should be legally constructed or authorisedly constructed for the purpose of taxation".

It can thus be seen that in respect of a similar provision about assessment of tax, as contained in the Mumbai Municipal Corporation Act, 1888, it has been held that the building should not be legal or authorised, for the purpose of tax. Thus, mere imposition of house tax is not sufficient to hold that the construction is legally effected after obtaining necessary permission/ license. I have carefully gone

through the judgment and order passed by the Tribunal and I do not find that it suffers from any infirmity so as to require interference.

17. This takes me to the alternate submission advanced on behalf of the petitioners. The petitioners have stated that they have applied for regularisation of the structures on the basis of Ordinance of 2016 to the competent authority and they may be granted reasonable time to vacate the premises/structures.

18. I have considered the submission made. It is needless to mention that the competent authority will have to consider the claim for regularisation if made, in accordance with the provisions of Ordinance of 2016 and any other legal provisions, as may be applicable. It is neither necessary nor appropriate to express any opinion on the merits of the claim of the petitioners for regularisation under the said Ordinance of 2016.

Insofar as the request for grant of time is concerned, the learned Counsel for the respondent states that in the event, this Court is inclined to grant time, reasonable time upto 30.09.2016 may be granted.

19. Considering the current monsoon season and the ensuing festivities, I find it appropriate to grant time to the petitioners to vacate the structures upto 31.12.2016.

20. In the result, the following order is passed:

O R D E R

(a) The petitions are dismissed.

(b) However, the impugned notice of demolition shall not be implemented till 31.12.2016.

(c) The competent authority shall decide the application for regularisation if, already filed and pending, in accordance with the provisions of Ordinance of 2016 and in accordance with law.

(d) The petitions are disposed of in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

AP/EV