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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION No. 3287 OF 2016

Hotel Navratna & Another

....Petitioners

Vs.

*The Municipal Commissioner
(NMMC) and Ors.*

....Respondents

Mr.Anil Sakhare, Senior Counsel a/w. Shilpan Gaonkar a/w. Mr. Sunil Lahaani a/w. Ms.Neeta Verghese a/w. Mr. Rohan Mahadik i/b. The Juris Partners for Petitioners

Mr.Sandeep Marne for Respondent Nos.1 to 4

Mr.V.S. Khanavkar for Respondent No.5

***CORAM : V. M. KANADE &
M.S. KARNIK, JJ.***

DATE : MARCH 17, 2016

P.C. :

1. By this petition, which is filed under Article 226 of the Constitution of India, the Petitioners are seeking an appropriate writ, order and direction, directing the Corporation to decide the application filed by the Petitioners dated 29.2.2016 in accordance with law. The Petitioners have challenged the notice dated 4.3.2016 which has been issued by the Corporation, asking them to demolish certain structures

which according to the Corporation are illegal.

2. Brief facts are that upon PIL filed by Respondent No.5, this Court after hearing all the parties was pleased to direct the Corporation to ascertain whether the structures of Respondent Nos. 4 to 6 are illegal and further direction was given to Respondent Nos.1 and 3 to nominate an appropriate officer for making site inspection and, thereafter, to take appropriate steps if it is found that illegal constructions made by the Respondents. Pursuant to the order passed in PIL No.131 of 2015, the Corporation appointed an appropriate officer for taking site inspection of all the hotels situated in Navi Mumbai and, thereafter, the impugned notice has been issued.

3. Shri Sakhare, learned Senior Counsel appearing on behalf of the Petitioners submits that the Petitioners are willing to satisfy the officers of the Corporation that some of the structures can be regularized and so far as other structures are concerned, they will satisfy the authorities about the regularization of the structures or alternatively, the structures will be removed by the Petitioners. It is submitted that the Corporation has to follow the due process of law viz. to issue a show cause notice and give an opportunity to the Petitioners to submit their say and,

thereafter, take a decision in accordance with law. It is submitted that by the impugned notice, the Corporation has directed the Petitioners to remove the said structures without giving them an opportunity to represent their case.

4. In our view, there is some substance in the submissions made by the learned Senior Counsel for the Petitioners. It is well settled position in law that if the Corporation wishes to demolish any illegal structures, it has to follow principles of natural justice and issue a show cause notice to the Petitioners and, thereafter, take a decision in accordance with law.

5. On the other hand, Shri Marne, learned counsel appearing on behalf of the Corporation has submitted that the Corporation had issued two notices to the Petitioner viz. one in the year 2008 and second in the year 2015. However, the Petitioners have not made any representation for regularization of the structures.

6. In our view, the controversy can be resolved by directing the Corporation to issue a fresh show cause notice under section 53(1) of the MRTP Act or under any other provisions of the Navi Mumbai Municipal Corporation Act. The Petitioners shall give their reply to the

said show cause notice. The Corporation shall give hearing to the Petitioners and take a decision in accordance with law, if possible, within a period of twelve weeks after the show cause notice is served on the Petitioners. The impugned notice dated 4.3.2016, therefore, is set aside.

7. With these directions, the writ petition is disposed of in the aforesaid terms.

M.S. KARNIK, J.

V.M. KANADE, J.