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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13637 OF 2016

Smt. Darshankaur Vajiringh Wasan

.. Petitioner

Vs.

The Thane Municipal Corporation and ors.

.. Respondents

Mr. R. D. Soni with Mr. S. N. Gawade and Mr. Ajay Sharma i/by Shree and Co. for petitioner.

Mr. R. S. Apte, Senior Advocate i/by Mr. A. R. Pitale for respondent nos.1 to 3.

Mrs. M. P. Thakur, AGP for State.

CORAM: NARESH H. PATIL &
M. S. KARNIK, JJ.

DECEMBER 14, 2016.

P.C.

1. The petitioner challenges the notice dated 29/11/2016 issued by the Thane Municipal Corporation under Section 260(1)(2) of the Maharashtra Provincial Municipal Corporation Act, 1949. Learned counsel appearing for the petitioner submits that 24 hours prior notice is unwarranted, unreasonable and deserves to be set aside. The petitioner had already secured no objection certificate from various authorities to run

the New Punjab Bar & Restaurant. The said Bar and Restaurant is being run since last many years in the shed earlier allotted to M/s. Ajay Oxi-Chlorides Flooring in Nandanvan Industrial Estate, L.B.S. Marg, which comes under the territorial jurisdiction of Thane Municipal Corporation.

2. Learned Senior Counsel Mr. Apte submits that petition deserves to be dismissed on account of suppression of material facts. Learned counsel submits that in the earlier round of litigation, the petitioner had approached this Court by filing Writ Petition No. 8559 of 2014 along with other connected petitions. A Division Bench of this court (Coram” Anoop V. Mohta and A. S. Gadkari,JJ.) disposed of the said petition by order dated 10/10/2014. Paras 3 and 4 of the said order read as under :-

“3. The learned counsel appearing for the Petitioners makes statement that the provision for regularization is available and therefore, we are inclined to direct the Petitioners to file Application for regularization, in accordance with law within two weeks from today. Liberty is also granted to file supporting documents as and when called for by the Respondent-concerned Authority. The Respondent-concerned Authority to decide the said Application, as early as possible, within two weeks thereafter, in accordance with law. It is

made clear that, if any adverse orders are passed against the Petitioners, the Petitioners need to demolish the offending portion inspite of pendency of their respective Suits. The statement is also made that the Petitioners will withdraw the Suits which are pending, if any, within one week from today.

4. It is also made clear that if any adverse orders are passed against the Petitioners, no steps be taken for two weeks, after communication of the order. The concerned Respondents are at liberty and free to implement the orders or take action based upon the adverse order, within the framework of law.”

3. The petitioner had filed an application for regularization of the subject structure/construction, in which the petitioner has been running the Bar & Restaurant. Learned Senior Counsel Mr. Apte also placed on record a photo-state copy of order dated 5/9/2014 passed by the Thane Municipal Corporation Administration. The order dated 5/9/2014 mentions that the Thane Municipal Corporation Administration is not in favour of the petitioner and had directed to demolish the unauthorized structure and failure to demolish, the Corporation would take necessary action.

4. It seems that Thane Municipal Corporation did not implement

the order dated 5/9/2014 for last two years for the reasons best known to the Corporation authorities. A fresh cause of action seems to have been given to the petitioner now by the Corporation by giving 24 hours notice to the petitioner, to demolish the very same subject structure, which was the subject matter of the earlier petition.

5. We find substance in the submissions advanced by learned Senior Counsel Mr. Apte that petitioner had suppressed certain material facts from the court.

6. We direct the Commissioner, Thane Municipal Corporation to look into matter and call for explanation from the concerned officers and if required, initiate departmental enquiry against them.

7. In view of the above, we pass following order :

(a) The impugned notice issued under Section 260(1)(2) of the Maharashtra Provincial Municipal Corporation Act, 1949 on 29/11/2016 shall not be operative.

(b) The order passed by the Corporation on 5/9/2014 be

implemented by the Corporation in accordance with law
by giving prior intimation to the petitioner.

It is clarified that we have not expressed any opinion on merits
of the matter.

8. Petition is disposed of accordingly.

9. Registry to forward copy of this order to the Commissioner,
Thane Municipal Corporation by fastest mode.

(M. S. KARNIK, J.)

(NARESH H. PATIL,J.)