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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. 1575 OF 2013

|                                            |     |             |
|--------------------------------------------|-----|-------------|
| Cheru C. Pulikkottil & Ors.                | ... | Petitioners |
| Vs.                                        |     |             |
| The Bombay Municipal Corporation<br>& Ors. | ... | Respondents |

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None for the Petitioners.

Ms. Shobha Ajitkumar, for the Respondent - BMC.

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

DATE : MARCH 21, 2016

PC.

1. None appears on behalf of the Petitioners. Perused the affidavit in reply filed by the Respondent.

2. The Petitioners by this petition, which is filed under Article 226 of the Constitution of India, are seeking following reliefs:

“(a) That this Hon'ble court be please to issue writ of mandamus or any other appropriate writ order calling for the record, proceeding and papers with regard to the notice / application dated 03/10/1997

U/sec 342 of BMC Act, 1888 and being application reference No. 003010 and being File No. CE/5145 / BPES/AM in respect of premises described as Aditya Villa, Plot No. 616, CTS No. 335, 335 / 1-2, Wamanwadi Lane, Sion Trombay Road, Chembur, Mumbai – 400 071 in consonance with file No. CE/3547/AM of Daksha Niwas and after examining legalities and proprieties of the same be pleased to order the BMC to demolish entire illegal structure named as Aaditya Villa consisting of stilt + 5 storied building on Plot No. 616, CTS No. 335, 335/1-2, Wamanwadi Lane, Sion Trombay Road, Chembur, Mumbai 400 071, constructed under the guise of Application U/Sec. 342 of Bombay Municipal Corporation Act, 1888 forthwith.

- (b) That pending the hearing and final disposal of the petition this Hon'ble Court be pleased to order and direct the Bombay Municipal Corporation not to grant any permission for any kind of alteration and addition and / or regularize illegal, unauthorised construction i. e. Aaditya Villa consisting of stilt + 5 storied building on Plot No. 616, CTS No. 335, 335/1-2, Wamanwadi Lane, Sion Trombay Road, Chembur, Mumbai – 400 071.
- (c) That pending the hearing and final disposal of the

petition the respondent no. 5 to 7 be order and direct not to dispose off any of the part of the illegal building i.e. Aaditya Villa consisting of stilt + 5 storied building on Plot no. 616, CTS No. 335, 335/1-2, Wamanwadi Lane, Sion Trombay Road, Chambur, Mumbai 400 071 without leave of this Hon'ble Court in the interest of justice and effective implementation of rule of law for the larger interest of public.

- (d) That ad-interim relief in terms of prayer (b) & (c) be granted.
- (e) That cost of the petition be provided for;
- (f) Such other and further relieves as this Hon'ble Court may deem fit and proper be granted to meet the ends of justice under the facts and circumstances of the case.”

3. In our view, firstly, petition is not maintainable since it involves the disputed question of facts, which cannot be gone into by this Court, while exercising our writ jurisdiction under Article 226 of the Constitution of India.

4. Moreover, in paragraph 4(c) of the affidavit in reply, it is mentioned occupation permission to the building was issued on

20.8.2010. This being the position, it cannot be said that structure in question is unauthorised. Writ petition is, therefore, dismissed in view of the affidavit in reply filed by the Respondent.

Sd/-  
[M. S. KARNIK, J.]

Vinayak Halemath

Sd/-  
[V. M. KANADE, J.]