

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

WRIT PETITION NO. 1710 OF 2015

Prajwal Prabhakar Vaidya & Anr. .. Petitioners
Versus
The Municipal Corporation of Greater Mumbai & Ors. ..Respondents

Mr.Vaibhav Joglekar with Mr.K. Talukdar I/b. Yatin R. Shah for Petitioners.
Mr.S.S. Pakale with Mr.H.C. Pimple for BMC.
Mr.P.A. Sarwankar I/b. Sarwankar & Co. for Respondent No.3.

**CORAM: M. S. SANKLECHA &
S.C. GUPTE, JJ.**

DATE : 29 SEPTEMBER 2016

P.C. :

At the request of the parties, the petition is being disposed of finally at the state of admission.

2. The challenge in this petition is to the order of attachment dated 20 March 2015 under Section 202 of the Mumbai Corporation Act, 1888 (the Act). The impugned order is issued by the Assistant Assessor & Collector, E-Ward, Municipal Corporation of Greater Mumbai - Respondent No.2.

3. The grievance of the Petitioners is that the impugned order of attachment was not preceded by any special notice under Section 162 of the the Act nor even service of any bills with regard to the property taxes payable by the Petitioners.

4. Mr.Pakale, learned Counsel for the Municipal Corporation disputes that no special notice under Section 162 of the Act was issued to the Petitioners. According to him, three notices dated 22 March 2012 under Section 162 of the Act have been issued in respect of each of the three structures. It is also not accepted at this stage that the entire amount due has been deposited.

5. However, Mr.Pakale, learned Counsel for the Corporation, states, in the peculiar facts and circumstances of this case, on instructions of Mr.Manohar S. Jadhav, Assistant Assessor & Collector, E-Ward, and without going into the issue whether special notice under Section 162 of the Act was served upon the Petitioners, an *ex post facto* hearing would be granted to the Petitioners and an order passed thereon. The stand of the Corporation in this case is very fair and reasonable.

6. However, it is made clear that the impugned order of attachment dated 20 March 2015 could continue till such time as the decision is taken on the hearing granted to the Petitioners. We make it clear that the hearing would be given to the Petitioners in respect of the three special notices issued under Section 162 of the Act dated 22 December 2012. As the Petitioners would be heard, a co-occupant, namely, Respondent No.3, who claims to have paid entire amount demanded under the impugned attachment notice, would also be granted a hearing along with the Petitioners. All rights and contentions of the parties are kept open.

7. It is made clear that if the order of the Corporation consequent to the hearing is adverse to the Petitioners, the Corporation will not act upon the same for a period of three weeks from the date of its order and communication.

8. The petition is disposed of in above terms. No order as to costs.

(S.C. GUPTE, J.)

(M. S. SANKLECHA, J.)