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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2158 OF 2015**

Shri Bharat Bhoir	... Petitioner
Vs.	
The Executive Engineer, The Maharashtra State Road Development Corporation Ltd. and Ors.	... Respondents

Mr. Abhishek Deshmukh i/by Mr. Sanjiv A. Sawant for the Petitioner.
Ms. Aparna D. Vhatkar, AGP for the Respondent Nos.3 and 4.
Mr. Prashant P. Chavan i/by Ms. Reshmarani J. Nathani for the
Respondent Nos. 1 and 2.

**CORAM : A.S. OKA &
A.K. MENON, JJ.**

DATE : 27th APRIL, 2017

PC.

1 The challenge in this Petition under Article 226 of the Constitution of India is to the notice dated 13th February, 2015 issued by the first respondent to the petitioner. By the said notice, the petitioner has been called upon to show documents indicating that the structure erected on an area of 20 square meters has been authorisedly erected.

2 When this Petition was heard yesterday, two contentions were raised by the learned counsel appearing for the petitioner. First

one was that there is a permission granted by the Gram Panchayat, Dahisar to carry out the said construction. The second contention was that the structure subject matter of the notice has not been erected on the land vesting in the State Government and if an opportunity of being heard would have been granted to the petitioner, he could have established the said fact.

3 After perusing the so called permission relied upon by the petitioner (page 14 at Exhibit – C), we find that it is not a permission granted by the Dahisar Gram Panchayat. It is only a no objection granted by Dahisar Gram Panchayat for construction of a building subject to obtaining of permissions including the permission of MMRDA. No other permission is relied upon by the petitioner. Hence, the structure subject matter of the notice is completely unauthorised.

4 Faced with this difficulty, the petitioner has today tendered an undertaking on oath stating that he will remove the affected structure as mentioned in notice dated 13th February, 2015 on or before 31st May, 2017. The undertaking is marked as 'X-1' for identification and the same is taken on record. We accept the said undertaking. In view of the undertaking, the challenge to the impugned notice does not survive and we pass the following order :-

ORDER

- (i) Writ Petition is rejected;
- (ii) In view of the undertaking of the petitioner taken on record and marked 'X-1' for identification, the action of demolition of the structure subject matter of the notice dated 13th February, 2015 shall not be taken till 31st May, 2017;
- (iii) If the petitioner fails to remove the structure subject matter of the notice on or before 31st May, 2017, it will be open for the first respondent to remove the structure without issuing any notice to the petitioner;
- (iv) The issue of title raised by the petitioner is not adjudicated upon and the same is kept open.

(A.K. MENON, J)

(A.S. OKA, J)