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

WRIT PETITION NO. 11861 OF 2017

Nirman Residency Co- Hsg. Soc. Ltd. & Anr. ... Petitioners
Versus
Sawantwadi Municipal Council & Town ... Respondents
Planning Authority

Mr. Vishal Kanade, with Mr. Dilip Rai, i/b Ms. Aruna Singh for the
Petitioners.
Ms. Priyanka Bhadrashete, i/b Mr. N.N. Bhadrashete for the
Respondents.

**CORAM: SMT. VASANTI A NAIK AND
MR. RIYAZ I. CHAGLA, JJ.**
DATED: 22ND NOVEMBER 2017

PC:-

By this writ petition, the petitioner society challenges the
notices served by the respondent municipal council on the
petitioner, dated 26th October 2017, 15th September 2017 and
29th September 2017 as being bad in law.

It is stated on behalf of the petitioners that though the
concerned gate affixed by the petitioners to the compound wall of
the society building does not contravene the development control
regulations and the same does not affect the ingress and egress
of the persons concerned, the respondent municipal council has
illegally served the impugned notices, asking the petitioners to
remove the gate. It is submitted that the municipal council could
have initiated action against the petitioners only if the petitioners

had the affixed gate in contravention of the relevant rules. It is stated that the issuance of the impugned notices is colorable exercise of power, inasmuch as the same are issued at the behest of Smt. Padmaja Patki, who had filed a suit against the petitioners.

On the other hand, it is stated on behalf of the municipal council that a decree has been passed against the present petitioners directing them to remove the gate, more specifically described in the judgment in the civil suit. It is stated that since a decree is passed by the trial court against the predecessor-in-title of the petitioner society and since the petitioner society has secured the right and title to the property from its predecessor-in-title, the decree would be binding on the petitioners. It is submitted that the impugned notices are served on the petitioners on the basis of the decree passed against the predecessor-in-title of the petitioners.

In the circumstances of the case, we do not find that the petitioners would have any right to effectively challenge the impugned notices served by the municipal council on the petitioners. Admittedly, against the predecessor-in-title of the petitioners, a decree is passed in a suit filed by Smt. Padmaja Patki, asking the predecessor-in-title of the petitioners to remove the gate, more specifically described in the suit. Merely because the decree is not executed by Smt. Patki it cannot be said that the municipal council would not have any right to ask the petitioners to remove the gate and that the petitioners would have a right to retain the gate despite the decree passed against the predecessor-in-title of the petitioners.

Since the petitioners cannot effectively challenge the impugned notices, we dismiss the writ petition with no order as to costs. It is however made clear that the municipal council would be entitled to remove only the gate or the part of the gate that is directed to be removed in terms of the decree. Order accordingly.

(RIYAZ I. CHAGLA J.)

(SMT. VASANTI A. NAIK, J.)