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

WRIT PETITION NO. 13070 OF 2016

Dr. Ramkumar Sharma & Anr.

...Petitioners

Vs.

The Commissioner Mira Bhayandar Municipal Corpn. ...Respondents

Mr. R.S. Apte, Sr. Advocate a/w. Mr. Sandesh Patil i/b. Mr. C. Shah,
Ms. Arusha Amin for the Petitioners

Mr. M.S. Lagu for Respondent Nos. 1 & 2

Mr. M.S. Topkar i/b. Mr. Ranjana Todankar for Respondent No.3

CORAM : NARESH H. PATIL &

M.S. KARNIK, JJ.

DATED :15TH MARCH, 2017

P.C. :

The Petitioners challenges the impugned order dated 28th October, 2016 passed by the Corporation. The Petitioners admittedly runs a nursing home in the name “Hitankshi Nursing Home” in a residential building known as Indraprastha, Poonam Vihar Co-operative Housing Society situated Near Ayyappa Temple, Poonam Sagar Mira Road (E), Tal. & District Thane. The Commissioner had issued NOC by communication dated 13th April, 2010 (Exhibit-H) on certain conditions.

2. A show-cause notice was issued by the Town Planning Authority, Meera Bhayandar Corporation dated 22nd September 2016 (Exhibit-C) addressed to the Society.

3. The parties were heard by the Commissioner of the Corporation. Consequently impugned order was passed.

4. Learned Counsel appearing for the Petitioners submits that the Society approached Co-operative Court against the Petitioners for seeking relief to prevent the Petitioners for running a nursing home. The Society filed appeal before the Co-operative Court and Appellate Forum. Writ Petition arising out of the said orders passed by the Co-operative Court is pending before the single Judge of this Court.

5. Learned Counsel appearing for the Petitioners submits that the impugned order is vague in nature. The Petitioners are running nursing home in accordance with the permission granted by the Corporation, but there are no violation of the conditions stipulated in the NOC granted by the Corporation.

6. The submissions made by the learned Counsel appearing for the Petitioners are disputed by the learned Counsel appearing for the Society Respondent No.3. It is submitted that number of violations are committed by the Petitioners. The residents of the Society are inconvenient due to various factors. The Corporation has preferred not to file reply though notice was issued on 29th November, 2016.

7. We perused the record placed before us. We find that the Corporation issued show-cause notice based on the complaint received from the Society. The fact is that show-cause notice ought to have disclosed specific grounds or alleged violations made by the Petitioners or inconvenience caused to the residents of the Society. The impugned order is also vague in nature. It does not specifically deal with the issues raised by the contesting parties.

8. In the facts we are of the opinion that the matter requires to be remanded back to the Commissioner, Corporation.

9. We pass following order:

(a) The impugned order dated 28th October, 2016 is

quashed and set aside.

(b) We direct the Corporation to issue fresh show-cause notice raising specific grounds to the Petitioners within two weeks from the receipt of this order.

(c) After service of show-cause notice on the Petitioners the parties must be heard and thereafter a reasoned order shall be passed by the Commissioner. If any adverse order is passed against the Petitioners the same shall not be effected for further period of two weeks, from the date of service of the same on the Petitioners.

(d) The Commissioner shall independently deal with the matter irrespective of the outcome of the Civil proceedings initiated by the Society.

(e) All issues on merits are kept open. It is clarified that we have not expressed any opinion on the merits of the matter.

(f) The Petition is disposed of accordingly.

(M.S. KARNIK, J.)

(NARESH H. PATIL, J.)