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

WRIT PETITION NO. 11139 OF 2012

Dr. Madhusudan Krushna Nigalye,
Since Deceased, through his
heirs and legal representatives:
1. Smt. Sunita Madhusudan Nigalye
and Another

..... Petitioners.

V/s

Thane Municipal Corporation and Anr. Respondents.

Mr. Rajesh S. Datar, Advocate for the Petitioners.
Mr. N. R. Bubna, Advocate for Respondent No.1 – TMC
Mr. Abhijit Kandarkar, Advocate for Respondent No.2.

**CORAM: B. R. GAVAI &
M.S. KARNIK, JJ.**

DATE: 14th September, 2017

P.C.:-

1] Rule. Rule is made returnable forthwith. Respondents waive service. Heard by consent of parties.

2] The Petitioner, by way of present Petition, impugns the communication dated 06/10/2012, vide which the permission granted to the Petitioner on 06/11/1988 for change of user from residential to commercial (wedding ceremony, meeting hall, small hotel and restaurant) has been withdrawn.

3] The facts, in brief, giving rise to the present Petition are as under:-

4] One M/s Majethia Enterprises had constructed a building of Shivakrupa Premises Society. The Petitioner had purchased a Unit bearing No.101-B admeasuring 2300 sq. ft. together with terrace attached thereto on the first mezzanine floor of the said building. After the occupancy certificate was granted for the said building on 14/03/1986, it appears that the present Petitioner applied for a change of user. Respondent – Corporation, vide Order dated 06/11/1988, granted permission to the proposed use of the premises on the mezzanine floor of the first floor of the said building for wedding ceremony, meeting hall and small hotel and restaurant. The said permission is signed by the Commissioner, Thane Municipal Corporation. It appears that, thereafter, the Petitioner has been continuously using the said premises for the purposes for which the permission was granted on 06/11/1988. However, it appears that vide impugned communication, the said permission is withdrawn on the ground that the user is not in consonance with the Development Control Regulations. Being aggrieved thereby, present Petition has been filed.

5] Mr. Datar, learned Counsel appearing on behalf of the Petitioners, submits that, as a matter of fact, the entire area in which

the said building is situated, is declared as commercial area. He submits that, in any case, the Corporation has totally erred in withdrawing the permission granted 26 years back, unilaterally.

6] Mr. Kandarkar, learned Counsel appearing on behalf of Respondent 2, on the basis of whose complaint the impugned order has been passed, submits that, as a matter of fact, in a Writ Petition filed by the said Respondent being Civil Writ Petition No.1706 of 2009, Division Bench of this Court had directed that the unauthorized construction which was done in the said building, be demolished. He further submits that, not only that, in an SLP, the Supreme Court has refused to interfere with the said order. He, therefore, submits that since the Petitioner is occupying the structure which is unauthorized, no interference is warranted in the present Petition.

7] We find that the manner in which the Corporation has passed the impugned order is totally contrary to the settled principles of natural justice. Undisputedly, the Petitioners were permitted to use the said premises for commercial purpose as early as on 06/11/1988. However, the impugned order is passed after 26 years without giving even a show cause notice to the Petitioners. By now, it is a settled principle of law that every order inviting adverse civil consequences must be preceded by the principles of natural justice, unless applicability thereof is exempted expressly or by necessary implication. When the Petitioners' business, which was running for 26 years, was to

be stopped, in our view, least that was expected of the Corporation was to have given a show cause notice and an opportunity of being heard to the Petitioners.

8] We do not wish to go into the issue raised by Mr. Datar that the entire area is declared as commercial area. However, if the Corporation had given notice to the Petitioners and an opportunity of being heard, the Petitioners could have very well addressed the Corporation and pointed out how the impugned order could not have been passed.

9] Insofar as the contention of Mr. Kandarkar with respect to litigation before this court is concerned, the same cannot be interlinked with the impugned order. Perusal of the order passed by Division Bench of this Court in Writ Petition No.1706 of 2009 dated 03/02/2009 itself would reveal that the same was pertaining to the unauthorized construction. The said order was carried before Their Lordships of the Apex Court by way of an SLP No.32597 of 2009. In the said SLP, the Hon'ble Apex Court refused to interfere with the order passed by the High Court on the ground that the order passed by the High Court was an innocuous order. It was observed that the High Court directed the inquiry to be conducted and if the construction was found to be unauthorized, the same was directed to be demolished. The said SLP was filed by M/s Majethia Enterprises, who had constructed the said building. It is further pertinent to note that even

prior to the date on which Their Lordships of the Apex Court passed an Order i.e. on 10/08/2010, the Corporation had already taken action and demolished the construction which was found to be unauthorized. It could thus be seen that if an unauthorized construction was already demolished prior to 10/08/2010, then, notice dated 06/10/2012, in our considered view, cannot be interlinked with the said issue. In any case, perusal of the order itself would reveal that it has not been passed on the ground that the construction is unauthorized but only on the ground that it is not in consonance with the Development Control Regulations.

10] In that view of the matter, we find that the impugned order is unsustainable in law. Rule is made absolute in terms of prayer clause (b). Needless to state that all consequences upon quashing of the impugned order shall follow.

(M. S. KARNIK, J.)

(B. R. GAVAI, J.)