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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1607 OF 2017**

1. Shri Raghuvir Madhyamik Vidyalaya
 2. Shivdatta Educational Trust
- ... Petitioners

Vs.

1. Municipal Corporation of Greater Mumbai
 2. The Deputy Collector
 3. The Senior Police Inspector
 4. The Chief Fire Officer
 5. Assistant Commissioner of Police
- ... Respondents

Mr. Raju Z. Moray i/by Mr. Sagar A. Rane for the Petitioners.
Mr. A.Y. Sakhare, Senior Counsel a/w Ms. Geeta Joglekar and Mr. Sagar Patil for the Respondent Nos.1 and 4.
Mr. U.S. Upadhyay, AGP for the Respondent Nos.2, 3 and 5.

**CORAM : A.S. OKA &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 26th JULY, 2017

ORAL JUDGMENT : (Per A.S. Oka, J.)

1 By order dated 19th July, 2017, the parties were put to notice that the Petition will be taken up for final disposal. Rule. Advocate on record for the first and fourth respondents waives service. The learned AGP waives service for the second, third and fifth respondents.

2 The second petitioner is running the first petitioner – Secondary School on the plot of land more particularly described in paragraph 2 of the Petition. It is stated therein that the State Government has granted the said plot to the second petitioner as Occupant Class-II. The allotment has been made to the second petitioner with effect from 1st August, 2001. It is disclosed in the Petition that the said plot has slums on all the sides. There is a sketch annexed to the Petition (Exhibit-A) showing the location of main gate which is shown by pink colour. The other two small exits to the school premises are also shown. It is stated that these small exits open into small non-motorable pathways passing through slums. It is stated that only the main entrance gate has access by an approach road which is connected on the northern side to the main Development Plan road known as Ambedkar Road. It is claimed that it is the only motorable approach for the first petitioner – School.

3 It is pointed out that earlier in the year 2009, unauthorised structure of a shed was made on the said approach road in which idol was installed. The present petitioner after complaining to the Municipal and other Authorities about illegal construction which was blocking the said access road filed a Writ Petition No.2952 of 2012 for seeking a writ

of mandamus and other ancillary reliefs. The said Writ Petition came up before a Division Bench of this Court on 22nd February, 2013. Clauses 2 to 4 of the said order read thus :-

- “2. We are appalled to hear from the Corporation that the matter regarding unauthorised structures and encroachments will have to be redressed by the Collector, even though the Corporation, indisputably, is the Planning Authority of the concerned area. The fact that the Collector is the owner of the plot where the encroachment has been reported, does not mean that the Corporation is extricated from its responsibility of the Planning Authority. Being the Planning Authority, the Corporation alone is competent to initiate action under the provisions of the concerned enactment to undo the illegal constructions and encroachment. Indeed, the Corporation can expect cooperation from the Collector as well as the local police authorities but cannot absolve itself of the responsibility of taking action against such illegal construction, if any.
3. We hope and trust that the grievance made by the petitioner in the present petition receives attention at the highest level in the Corporation. We are inclined to make this observation as we find that the Officer of the rank of Assistant Municipal Commissioner is of the opinion that he cannot initiate any action in the matter which, in our opinion, is preposterous.
4. We, therefore, expect that the Official not below the rank of Deputy Municipal Commissioner, in the first

place, should examine the grievance of the petitioner and take action and issue directions, as may be necessary in the fact situation of the present case.”

4 The order dated 11th March, 2013 passed by the Division Bench in the same petition notes that there is a direction issued by the Deputy Municipal Commissioner of the first respondent – Corporation to issue notices under Sub-Section (1) of Section 53 and Section 55 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the said Act”). Further order dated 17th April, 2013 records that only A.C. sheet roof of the structure has been removed. A direction was issued to the Municipal Corporation to take appropriate action on the basis of both the notices under Sub-Section (1) of Section 53 and 55. The order dated 7th May, 2013 directed the Municipal Corporation to take action in accordance with Clause (b) of Sub-Section (6) of Section 53 of the MRTP Act on the basis of notice issued under Section 53(1). Order dated 27th June, 2013 notes a statement of the Municipal Corporation that the obstruction on the access road has been removed and the order of this Court has been complied with. This Court directed the officer of the Fire Brigade of the first respondent to inspect the site. Inspection report submitted by the Station Officer of the Fire Brigade is annexed to the Petition. Clauses 5 and 6 of the said Inspection Report of 14th August, 2012 read thus :-

“5) Observation :-

On visiting the premises it was observed that said school is a ground plus one upper floored, steel framed, bricked walled, A.C. sheet roofed structure. The school have one main entrance gate on north side and two small exit gate on south side but it was not abutting to road. The only accessible entrance/exit gate of the school for fire engine & emergency vehicles is on north side. however the approach road leading to this gate is obstructed by unauthorized construction of brick walled, iron girder frame. A.C. sheet roofing shed in front of north side only main entrance/exit gate of the said school and also unauthorized extension of weather shed of the hutments along the road side thereby obstructing easy access of emergency vehicles like Fire engine, Ambulance etc. to school premises in time of emergency, which is highly objectionable from the firefighting & life safety point of view.

6) Action and Recommendations :-

In view of the above the only accessible entrance/ exit gate of the school for fire engine & emergency vehicles is obstructed by unauthorized construction on its approach road is highly objectionable from the firefighting & life safety point of view. As this matter is pertaining to Building Department, the Asstt. Mun. Comm. (R/South ward) is requested to depute concern building department personnel to visit the premises to verify & demolished the unauthorized construction on

the approach road in front of the north side main gate of the school to made it easily accessible for the fire brigade & emergency vehicles.”

(underline supplied)

5 Further order dated 16th September, 2013 takes a note of the fact that though the shed was removed, the idol was left untouched. In paragraphs 6 to 8 of the said order dated 16th September, 2013 the Division Bench has made the following observations :-

“6 In these circumstances on the land belonging to the Collector/ public property, the Respondents should not encourage any person to undertake such unauthorized and illegal acts. In that event it would be claimed that in private properties all such acts are permitted even if they block somebody's entrance or access and then the Respondent No.1 will find it difficult to deal with such complaints. When the acts of the nature indulged by some parties are complained of on the Collector's land, then, we are of the opinion that no policy of the Municipal Corporation or the State could have permitted retention of the platform or structure on which the idol is placed and that could not have been, therefore, left intact. We can appreciate and understand the argument of Mrs.Punjabi and Mr.Sayed, that there are religious sentiments involved. If such sentiments are involved and the authorities are obliged to exercise caution and care so that the idols remain untouched, then, nothing prevents them from taking such steps so as to preserve

and protect the idols by shifting or removing them to some other place. The retention thereof at site would not solve the problem of the nature raised before us and repeatedly.

7. When the Honourable Supreme Court has, from time to time, indicated that the temples which are unauthorized cannot be allowed to remain intact at site, then, we do not see how compliance with the law of land presents difficulties and practical ones as raised before us. The State and the Municipal Corporation are expected to work in coordination and not shift the blame on one another in such matters so that the larger public interest is subserved and is not sacrificed.
8. In these circumstances and when we inquired as to when the idol and the platform will be removed, that Mr. Sayed, on taking instructions from Mr. Patil, Police Inspector attached to Samata Nagar Police Station, informs that requisite police force/assistance will be provided to the Assistant Municipal Commissioner within one week from the date of receipt of a copy of this order. As soon as such police assistance is provided, the concerned Assistant Municipal Commissioner to take steps and remove the idol to such other place as he deems fit and proper and then demolish the platform/structure completely so as to enable the Petitioners' school and students, staff and all those visiting it complete, smooth and unobstructed access to the school

premises. Let the needful be done by all concerned within two weeks from the date of receipt of a copy of this order.”

(underline supplied)

6 Ultimately, in order dated 7th October, 2013 passed by the same Division Bench records compliance of the removal of the entire structure. In the said order, the Division Bench observed that the State Government has to ensure that the land which is under the control of the Collector being public property, is not encroached upon. With the said observation, the Petition was disposed of.

7 Now, the present Writ Petition has been filed by the petitioners making a grievance that the illegal structure consisting of iron girder frame and A.C. sheet roof has been erected on the said approach road. Therefore, a writ of mandamus is sought directing demolition of the said structure.

8 The petitioners are also relying upon the report dated 18th April, 2017 submitted by the Divisional Fire Officer of the Fire Brigade Department of the first respondent – Municipal Corporation. The said report contains the following observations and recommendations :-

“Observations :

The site under reference is a Low rise school named Raghuvir Madhyamik Vidyalaya comprising of Part ground

floor & part ground + 1st floor. The main entrance gate of the school is located at the south side abutting on the narrow lane. The approach to the said school is from a narrow lane at south side through Dr Ambedkar road. It was noticed that a steel framed, AC sheet roofed shed was constructed at the entry of the narrow lane from Dr. Ambedkar road. The erection of the said shed will obstruct the entry of fire appliances and ambulance etc in case of any emergency from the only approach lane available for the school.

It is also revealed by Asst. Head Master of the school and learnt from the documents submitted by complainant that earlier a similar shed was erected at the same place which was demolished as per the orders passed by Hon. Bombay High Court in Writ Petition No.2952 of 2012. However, again a shed was found erected on the narrow lane between school main gate and access road.

Recommendation :

In view of the above, Asst. Commissioner/ Designated officer, R/S ward is requested to depute concerned personnel to remove the said shed at the earliest. The access to the school shall be maintained free from any obstruction for the appliances/ ambulances at all the time.”

(underlines supplied)

9 The recommendation of the Divisional Fire Officer is to remove the said shed at the earliest so that said access road is maintained free from any obstruction for the fire appliances/ambulances at all the time.

10 The first respondent has filed an affidavit-in-reply of Shri Rajesh S. Akre, Assistant Engineer (Maintenance). In the said reply, it is accepted that the said land is a Collector's land and is a declared slum. It is further stated that the then elected Municipal Councillor of the concerned ward by a letter dated 16th April, 2016 submitted to the Assistant Commissioner a suggestion for carrying out of the work which has been carried out on the said access road. The elected Councillor was at the relevant time the Chairman of the Ward Committee (Prabhag Samittee). The Ward Committee vide Resolution dated 28th April, 2016 bearing No.150 resolved to construct open auditorium by inviting E-Tenders. It is stated that accordingly the work was carried out through a contractor. In clause (d) of paragraph 5, it is stated that the size of the shed is 7.50 meters x 5.70 meters and area admeasuring 6 meter x 1.80 meters is free from encroachment for mini-vehicular traffic and pedestrian traffic. The photographs of the shed are relied upon.

11 The learned counsel appearing for the petitioner submitted that act of the respondents of constructing a shed on the land vesting in the State Government in a slum area is completely illegal. Inviting our attention to the report dated 14th August, 2012 submitted by the Station Officer of the Mumbai Fire Brigade, he submitted that even otherwise in

the light of the said report no construction could have been carried out by the Municipal Corporation. He also invited our attention to orders passed in Writ Petition No.2952 of 2012 from time to time. He also invited our attention to the proposal dated 16th April, 2016 annexed to the affidavit-in-reply which is submitted by the then elected Councillor who was the Chairperson of the Ward Committee. He submitted that what was proposed by the elected Councillor was construction of temple shed and passage but what was approved by the Ward Committee was the construction of open auditorium and the funds were sanctioned for open auditorium. He submitted that construction is patently illegal. The learned Senior Counsel appearing for the first respondent – Municipal Corporation pointed out the averments made in the affidavit of Shri Akre and submitted that after following due procedure that the shed has been constructed. He relied upon the Resolution of the Ward Committee and the fact that after following tender process, the work was carried out through a Contractor. He would, therefore, submit that no interference is called for in writ jurisdiction. The learned AGP has no instructions in the matter.

12 We have considered the submissions. As is clear from the affidavit of Shri Rajesh S. Akre filed by the first respondent and the orders passed in Writ Petition No.2952 of 2012 from time to time, the

said access road forms a part of a land vesting in the State Government which is declared as a slum area. It is not the case of the first respondent – Municipal Corporation that either permission of the State Government was obtained before carrying out construction subject matter of this Petition or that the land below the structure has been transferred by the State Government to the said Corporation. In fact, under the orders passed by this Court from time to time in Writ Petition No.2952 of 2012, illegal construction of a shed in which idol was installed was demolished by the Municipal Corporation. Therefore, only on the ground that the construction has been made by the Municipal Corporation on the land vesting in the State Government without permission of the State Government, the construction is completely illegal.

13 The matter does not rest here. We have already quoted the observations and recommendations of the Station Officer of Fire Brigade of the first respondent in his report dated 14th August, 2012. The observation is that earlier construction which was made at the same place was highly objectionable from firefighting and life safety point of view. Therefore, it was recommended to the Municipal Corporation to demolish the said structure which was eventually demolished. We have already quoted the observations made by the

Division Bench in the order dated 16th September, 2013 as well as in order dated 7th October, 2013. This Court expected the Municipal Corporation as well as the State to ensure that the land in question being a public property vesting in the Collector should be kept as it is and it is ensured that the same is not encroached upon.

14 As far as the offending structure subject matter of this Petition is concerned, there is a report dated 18th April, 2017 of the Divisional Fire Officer. His recommendation to the Assistant Commissioner/ Designated Officer is to remove the shed at the earliest and that the access to the school shall be maintained free from any obstruction for fire appliances and ambulances at all times. In fact, on the basis of the said recommendation of the Fire Brigade, a legal notice was served to the officers of the first respondent calling upon them to comply with the recommendation of the Fire Brigade Department. As there was no compliance, the present Petition has been filed.

15 Thus, it is crystal clear from the reports of the Fire Brigade dated 14th August, 2012 and 18th April, 2017 that by making illegal construction on the access road, the first respondent – Municipal Corporation has seriously compromised on the issue of fire safety and fire fighting. In case of any fire to the school premises, the impugned

structure will prevent the entry of fire appliances and ambulances to the school premises. This is the second ground on which we hold that the act of the first respondent of carrying out construction is patently illegal.

16 We are shocked to note that in the face of the orders passed by this Court from time to time in Writ Petition No.2952 of 2012, the structure subject matter of this Petition was erected by the Municipal Corporation without seeking permission of the State Government. While carrying out construction, the Municipal Corporation completely ignored the recommendations of the Fire Brigade in the report dated 14th August, 2012. After recommendations were submitted on 18th April, 2017 by the Divisional Fire Officer, the Municipal Corporation failed to take any action though legal notice was served to the Assistant Municipal Commissioner. Therefore, this is a case where the Municipal Corporation should be saddled with costs quantified at Rs.50,000/- which will be payable to the second petitioner.

17 Accordingly, we dispose of the Petition by passing the following order :-

ORDER

- (i) We direct the first respondent to demolish the offending

structure subject matter of this Petition within a period of one month from the date on which this judgment and order is uploaded. Within the said period, the Municipal Corporation shall not only demolish the structure but shall restore the original condition of the access road;

(ii) If the officers of the Municipal Corporation need police protection for demolition of the structure, the officer in-charge of the concerned local Police Station shall provide necessary police protection to the Municipal Officers on an application being made by the Municipal Corporation. In the light of the recommendations made by the Fire Brigade Department of the first respondent – Municipal Corporation, we direct the Municipal Corporation as well as the second respondent to ensure that the said access road subject matter of this Petition is maintained free of any encroachment;

(iii) We direct the first respondent – Municipal Corporation to pay costs quantified at Rs.50,000/- to the second petitioner within a period of two months from today;

- (iv) Rule is made absolute on above terms;
- (v) For reporting compliance, the Petition shall be listed under the caption of “Directions” on 29th September, 2017.

(SMT. VIBHA KANKANWADI, J)

(A.S. OKA, J)