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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1287 OF 2017**

Thangraj Soloman and Ors.	... Petitioners
Vs.	
The Municipal Corporation of Greater Bombay and Anr.	... Respondents

Mr. Mohit P. Jadhav for the Petitioners.
Ms. Vandana Mahadik for the Respondent – BMC.

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

DATE : 12th JULY, 2017

PC.

1 Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents. The first challenge in this Petition under Article 226 of the Constitution of India is to the notice dated 9th March, 2017 issued to the first petitioner under Section 55 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”). The allegation in the said notice is that the petitioners erected a temporary shed as shown in red colour on the sketch annexed to the said notice. The petitioner replied to the said notice. On the basis of the said reply, an order was passed by the Designated Officer on 2nd June, 2017 holding that the petitioner could not produce any document to show authenticity of the structure.

2 The second challenge is to the notice dated 6th April, 2017 issued by the Mumbai Municipal Corporation to the office bearers of Kailash Castle Co-operative Society Ltd. The said notice under Sub-Section (1) of Section 53 of the Maharashtra Regional and Town planning Act alleging that the brick masonry wall constructed in between 'Shivji Meghji Chawl' & 'Kailash Castle CHS. Ltd. is illegal and is constructed in contravention of the sanctioned plan of 13th July, 1979. As regards the first impugned notice, the first petitioner has filed an undertaking on behalf of himself and other petitioners stating that the petitioners will make an application for regularisation of the structure subject matter of the said notice. There is further undertaking given that in the event the application for regularisation is rejected, within a period of two weeks from the date of communication of the said order, the petitioners would remove the temporary shed themselves.

3 As regards the second impugned notice, the submission of the learned counsel appearing for the petitioners is that the petitioners will be affected by demolition of the wall. He submitted that if the wall is demolished, the property of the petitioners will face threat of encroachment.

4 As the specific allegation in the second impugned notice is that a wall has been constructed in breach of order dated 6th April, 2017, a copy of the sanctioned plan is produced by the learned counsel appearing for the Municipal Corporation. Inspection of the same is given to the learned counsel appearing for the petitioners. The compound wall is not shown thereon.

5 In any event, the petitioners have not stated that they have constructed the compound wall. Hence, it is not necessary to entertain a challenge to the second notice at the instance of the petitioners. The petitioners can always take such steps as are necessary for protecting their property or possession of their property as are permissible in law. Accordingly, we dispose of the Petition by passing the following order :-

ORDER

- (i) It will be open for the petitioners to make an application for regularisation of the structure subject matter of the first impugned notice within a period of eight weeks from today. Application shall be filed in prescribed format through their licensed architect;
- (ii) If such application is made, the same shall be decided by the appropriate Authority of the Municipal Corporation within a period of 60 days from the date of filing of the

application. The order passed on the application be communicated to the petitioners' architect;

- (iii) Till the date of communication of the order to the petitioners' architect, action of demolition shall not be taken on the basis of the first impugned notice dated 9th March, 2017;
- (iv) If the application for regularisation is rejected, action of demolition shall not be taken for a period of two weeks from the date on which the order is communicated to the petitioners' architect to enable the petitioners to remove the shed in terms of the undertaking;
- (v) The undertaking of the first petitioner filed on his behalf as well as other petitioners is taken on record and marked 'X2' for identification. Undertakings therein are accepted as undertakings of the petitioners;
- (vi) On the failure of the petitioners to remove the offending work within the aforesaid period of two weeks, it will be open for the Municipal Corporation to remove the same without issuing any further notice;

(vii) The challenge to the second impugned notice dated 6th April, 2017 stands rejected. This order will not prevent the petitioners from taking appropriate steps in accordance with law from protecting their property from encroachment;

(viii) The Petition is disposed of on above terms;

(ix) All concerned to act upon an authenticated copy of this order.

(SMT. VIBHA KANKANWADI, J)

(A.S. OKA, J)