

**IN THE COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2166 OF 2014**

Jay Mati and others	).... Petitioners
v/s.	
Municipal Corporation of	)
Greater Mumbai and Anr.	).... Respondents

Mr. Altaf Khan i/b Anjali R. Awasthi for the petitioner.

Ms. Vandana Mahadik for the Respondent Nos. 1 and 2.

CORAM : A. S. OKA &

SMT. VIBHA KANKANWADI, JJ.

DATE ON WHICH THE JUDGMENT IS RESERVED: 04/07/2017.

DATE ON WHICH THE JUDGMENT IS PRONOUNCED: 24/07/2017

JUDGMENT: (PER SMT. VIBHA KANKANWADI, J);

. Heard the learned Counsel appearing for the petitioners and the learned Counsel for the first and second Respondents. Taken up for final disposal at admission stage.

2. The Petitioners seek to challenge the notice dated 28-05-2014 issued by the first Respondent u/s. 349 of Mumbai Municipal Corporation Act, 1888 (for short 'MMC Act') with direction to reconstruct the demolished structure as well as decide the eligibility of

the petitioners for the alternate accommodation.

3. The Petitioners have come with a case that the Petitioner Nos. 1 and 2 are husband and wife and Petitioner Nos. 3 and 4 are their children. The Petitioners were residing in hutment at Shivaji Nagar (Geeta Nagar), Kapaswadi, Versova Link Road, Mumbai since 1994. There are documents show their residence since 1994. The second respondent had issued notice u/s. 349 of MMC Act on 28th May 2014 stating that the “the external walls and covering of the roof of the shed in open space causes nuisance”. It is also alleged that inflammable material has been used for the same. The Petitioners were called upon to remove the said shed within 7 days. The first petitioner had given a reply to the said notice on 4th June 2014. He also informed that the suit structure is a protected structure and therefore, he is entitled for alternate permanent accommodation. The said notice issued by the first respondent is illegal. It has been further contended that Maharashtra Act No. 9 of 2104 has been amended on 2nd May 2014, thereby making a provision for extending the protection and eligibility cut-off date from 1-1-1995 to 1-1-2000. The Respondents have ignored all these aspects. The Respondents have demolished the structure high handedly on 5th June 2014. Therefore, the petitioners have challenged the said act on the part of the respondents and the impugned notice.

4. The Respondents have filed a reply in the form of affidavit of one Tarakant Pawar, A. E. (B. & F) K/West Ward. He has stated that a complaint was received from Geeta Nagar Zopadpatti Rahavashi Sangh on 27-1-2014 regarding unauthorized construction of hutment by encroaching upon the land in their society and therefore notice u/s.

349 of MMC Act was issued. The occupiers had failed to remove the unauthorized structure and therefore, it was demolished on 5th June 2014. The said structure was not protected under the notification by Government and therefore petitioners are not entitled to alternate accommodation.

5. It has been argued on behalf of the petitioners that the notice issued by the respondents was illegal as particulars of alleged inflammable articles and nuisance have not been stated. The work of demolition carried out by the respondents is therefore, illegal. The Respondents have not considered the eligibility of the petitioners for the alternate permanent accommodation in view of the government notification. On the other hand, the learned Counsel appearing for the respondents submitted that the documents produced by petitioners are not sufficient to stated whether they pertain to the address given and the structure that has been demolished.

6. Perusal of the notice dated 28th May 2014 will show that respondents had purported to invoke Section 349 (1) of MMC Act. It has been stated that “the external walls and covering of the roof of the shed in open spaces causes nuisance situated at Geeta Nagar, New Kapaswadi, Juhu Versova Link Road, Andheri (West), Mumbai of which you are the owner/ occupier have/ has, since the MMC Act, came into force been constructed of inflammable material.” No description of inflammable material has been given in the notice. Further the dimensions of the structure have not been given, which respondents wanted to be removed. The most important point is that in the said notice it has not been mentioned that the said structure is unauthorized. Therefore, the reply given on behalf of respondents is

not in consonance with notice issued by them on 28th May 2014. It also not disclosed as to how the said shed is causing nuisance. The notice is vague and without requisite particulars, hence, illegal. It can not be allowed to be sustained. However, on the basis of said illegal notice, the respondents have carried out demolition work. The Petitioner had given reply to the said notice on 5th June 2014. In his reply, the petitioner has conveyed that the said structure is in existence since 1990 and had sought protection in view of the Government notification. He had also prayed for alternate permanent accommodation. The Respondents have not considered the said reply and it appears that without fallowing due process of law, went ahead with demolition work. Hence, the demolition work also will be have to be held as illegally carried out.

7 Therefore, the petition deserves to be allowed. We therefore, proceed to pass following order:

ORDER

1. The notice issued by respondent Corporation bearing No. KW/BF/DO-III/349/369/JE-15 dated 28th May 2014 is illegal and set aside.
2. The Respondent Corporation shall reconstruct the demolished premises as it was existing prior to its demolition on 05-06-2014 within a period of two months from the date of uploading of this order. In case of the failure on the part of 1st respondent to reconstruct the same within the said stipulated period, petitioners are at liberty to get it reconstructed as aforesaid. We make it clear that we are not holding that the original structure

was lawful. Therefore, the reconstruction will be subject to the right of the Municipal Corporation of demolishing it after following due process of law.

3. Writ Petition is disposed of on above terms.

(SMT. VIBHA KANKANWADI, J)

(A. S. OKA, J)