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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 2754 OF 2017

Ms. Preeti Ashok Balwani & Ors	... Petitioners
<i>Versus</i>	
State of Maharashtra & Ors.	... Respondents

Mr. Anoshak Daver, with Mr. Punit Damodar and Ms. Nikita Vardhan i/b Kanga & Co. for the Petitioners.
 Mr. M.A. Sayied, AGP for the State.
 Ms. Vandana Mahadik, for the Corporation.

**CORAM: SMT. VASANTI A NAIK AND
RIYAZ I. CHAGLA, JJ.**
DATED: 11th OCTOBER 2017

PC:-

By this writ petition, the petitioner challenges the notices dated 22nd March 2017, 29th May 2017 and 27th September 2017 by which the Corporation has sought to demolish the compound wall of the society in which the petitioners reside, for the purpose of road widening.

When a similar notice dated 10th October 2016 was served on the owners, occupiers and the secretary of the housing society in which the petitioners reside, the petitioners had challenged the same in writ petition (L) no. 68 of 2017. The petitioners had raised an objection to the road widening. According to the petitioners, the trees abutting the compound wall would have been damaged if the compound wall was demolished. It was also sought to be canvassed on behalf of the petitioners that without prescribing a road line, the widening of the road work was undertaken. An

objection was also raised that the Municipal Corporation had not called for any objections against the proposal for cutting the trees. After hearing the learned counsel for the parties, this Court did not find favour with the other submissions made on behalf of the petitioners except the submission that the trees surrounding the premises / society could be affected if the compound wall was demolished for the purpose of road widening. The Court, therefore, directed the Corporation to follow the prescribed procedure established for re-location and cutting of trees, if required. The Court permitted the petitioners to file necessary objection with the Municipal Corporation and directed the Municipal Corporation to look into the objections. In pursuance of the said order, the petitioners filed their objections in writing before the Corporation. By the order dated 14th February 2017, the objection of the petitioners was overruled and the Assistant Superintendent of Garden (H/W) recorded in the report that the garden department staff on visual inspection had found that there are eight Ashoka trees that are healthy and one dead coconut tree along with four saplings of coconut tree near the compound wall. It is observed in the report of Assistant Superintendent of Garden Department that the dead coconut tree may be dangerous in future. It is further observed that if the compound wall is demolished, the trees that are in sound condition would not fall or be affected. On the basis of the said report, impugned notices were served on the petitioners. The petitioners have challenged the said notices in the instant petition.

It would be necessary to note that when the petitioners had raised certain objections to the demolition of the compound wall in

writ petition (L) no. 68 of 2017, the Court was not impressed with the other submissions made on behalf of the petitioners, except the submission that the demolition of the compound wall may affect the trees. In pursuance of the order passed by this Court in writ petition (L) no. 68 of 2017, the petitioners had made a representation to the Corporation and the garden department of the Corporation after inspecting the area has found that the trees would not be fall or be damaged if the compound wall is demolished. The report of the Assistant Superintendent of gardens is based on the inspection of the area by the Garden Department staff. It would not be proper, in exercise of the writ jurisdiction to hold that the findings / observations in the said report are incorrect. Even otherwise, a balance has to be struck between development and the preservation of the nature – trees. The petitioners have annexed some photographs to the writ petition to point out that the trees abutting the compound wall could be affected if the compound wall is demolished. The counsel for the Corporation had made a statement in the previous petition that the compound wall would be demolished by taking necessary precautions as required by law and after approaching the tree authority. In the circumstances of the case, specially when the Corporation is of the opinion that the trees near the compound wall of the petitioners society would not be fall or be damaged while demolishing the compound wall, the prayer made by the petitioner in the instant petition is liable to be dismissed. In our view, the petitioners had an objection to the demolition of the compound wall in the previous petition and that could be the reason for filing the present petition by raising the plea that the if the compound wall is demolished, the trees would be affected or

damaged.

Hence, by accepting the statement made on behalf of the Corporation, specially in the report of the Assistant Superintendent (Garden Department) H/W ward, the writ petition is disposed of with a direction against the Corporation to take utmost care to ensure that the trees are not damaged while demolishing the compound wall. No order as to costs.

The learned counsel for the petitioners seeks a stay of the demolition of the compound wall only for 48 hours. The request is reasonable. Hence the same is granted. Order accordingly.

(RIYAZ I. CHAGLA J.)

(SMT. VASANTI A NAIK, J.)