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

WRIT PETITION (L) NO. 3185 OF 2017

Owners Court Co-Operative Housing Soc. ... Petitioners
Ltd. & Ors.

Versus

Municipal Corporation of Greater Mumbai & ... Respondents
Ors.

Ms. Iman K. Calcuttawala, for the Petitioners.
Mr. K.K. Trivedi, AGP.
Ms. K. Mastankar, for M.C.G.M.

**CORAM: SMT. VASANTI A NAIK AND
MR. RIYAZ I. CHAGLA, JJ.**
DATED: 22ND NOVEMBER 2017

PC:-

By this writ petition, the petitioners challenge the notice served on the petitioners by the respondent no.3 – corporation under the provisions of Section 351 of the Maharashtra Municipal Corporation Act. The petitioners have also sought a direction against the respondent no.3 – corporation to regularize the toilet block which is in existence since a very long time in the premises of the petitioner no.1.

The learned counsel for the petitioners states that the impugned notice is served on the petitioners by the respondent – corporation without following the due process of law. It is stated that neither were the petitioners heard in the matter nor was any opportunity granted to them before the notice under Section 351 of the Act was served on them. It is stated that the toilet block is in

existence since a long time in the premises of the petitioner no.1 and since the petitioners do not possess the sanctioned plans, they are not in a position to point out the exact time during which the toilet block was constructed. It is stated if that the structure of the petitioners is found to be illegal, the petitioners would apply for regularisation and the said application may be decided by the corporation in accordance with law.

Ms. Mastankar, the learned counsel for the corporation states that though before filing the writ petition, the petitioners were not heard, after the petition is filed, the petitioners were called for hearing and the petitioner no.2 had appeared before the corporation authority yesterday. It is stated that the petitioners are directed to produce the relevant documents in respect of the structure that is sought to be demolished within 10 days and an appropriate order would be passed by the corporation authorities, after that is done.

It appears on hearing the learned counsel for the parties that though the petitioners were not granted an opportunity of hearing before filing of the writ petition, it appears that the petitioners were heard yesterday and they were directed by the corporation to produce the relevant documents within 10 days. The corporation is free to pass appropriate orders after the necessary documents are produced by the petitioners. Since the petitioners desire to apply for regularisation, if an application for regularisation is made by the petitioners, the corporation would be bound to decide it in accordance with law.

Hence, we dispose of the petition with a direction to the respondents to consider the documents, if submitted by the petitioners within the stipulated time and take a decision. If the decision is adverse to the petitioner, the petitioner could apply for regularisation. The application for regularisation should be made online and through the licensed architect. If an application is made by the petitioners within three weeks after the corporation takes a decision that the structure is illegal, the same may be decided by the corporation in accordance with law. It is needless to mention that till the application for regularisation is decided, no coercive steps should be taken against the petitioners. Order accordingly. No costs.

(RIYAZ I. CHAGLA J.)

(SMT. VASANTI A. NAIK, J.)