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

WRIT PETITION (L) NO. 3290 OF 2017

Kazim Hussain Khairaz & Anr.

... Petitioners

Versus

M.C.G.M. & Ors.

... Respondents

Mr. Jayesh Bhatt, for the Petitioner.

Ms. Vandana Mahadik for M.C.G.M.

Ms. Sonali Padhav, i/b Kamlesh Ghumre, for Respondent Nos. 3 and 4.

**CORAM: SMT. VASANTI A NAIK AND
MR. RIYAZ I. CHAGLA, JJ.**

DATED: 6TH DECEMBER 2017

PC:-

By this writ petition, the petitioner challenges the notice under Section 314 of the M.M.C. Act dated 12th August 2017, asking the petitioner to demolish the extended portion of the structure or else action would be taken by the corporation for the demolition of the same.

It is stated on behalf of the petitioner that after the impugned notice was served on the petitioner on 12th August 2017, the petitioner had tendered the reply on 18th August 2017. It is stated that though the petitioner was called for hearing on more than a couple of occasions, hearing was not conducted in the matter pertaining to the impugned notice. It is stated that till the petitioner is heard, and till a decision is rendered in the matter pertaining to the impugned notice, the corporation should be restrained from taking any coercive steps against the petitioner.

Ms. Mahadik, the learned counsel for the M.C.G.M. states on instructions that though the land allotted to the petitioner by MHADA was very small, the petitioner has carried out illegal construction and extended the shop – structure to a great extent. It is submitted that the extended structure falls on the DP road that is owned by the M.C.G.M. It is stated that since the DP Road belongs to the M.C.G.M. and since the petitioner has encroached upon the DP road, the notice was rightly served on the petitioner. It is stated that if this Court so directs, the corporation would again hear the petitioner in the matter pertaining to the notice and take an appropriate decision in accordance with law.

By accepting the statements made on behalf of the corporation, we dispose of the writ petition with a direction against the corporation to decide the matter after hearing the petitioner. The petitioner undertakes to appear before the Assistant Engineer (Maintenance), on 13th December 2017 at 2.00 p.m. so that issuance of notice to the petitioner could be dispensed with. It is needless to mention that till the corporation takes a decision, the structure of the petitioner should remain protected.

Order accordingly. No costs.

(RIYAZ I. CHAGLA J.)

(SMT. VASANTI A. NAIK, J.)