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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1588 OF 2018

Mr. Pradeep Pandurang Patil ... Petitioner
Versus
The Thane Municipal Corporation & Ors. ... Respondents

Mr. Sanjay Patil, i/b Mr. D.T. Tiwari, for the Petitioner.
Mr. Jagdish G. Reddy (Aradwad) for the Respondent No.1.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATED: 6TH MARCH 2018.

PC:-

1. Heard learned counsel for the Petitioner. The learned counsel appearing for the Respondent Nos. 1 to 5 and the learned counsel appearing for the added Respondent (Applicant in Civil Application No. 538 2018). The Petitioner is relying upon the notice dated 13th November 2014 issued by the first Respondent – Municipal Corporation under Section 260 of the Mumbai Municipal Corporation Act, 1949 (in short “the said Act”). The said notice is addressed to Chairman / Secretary / Trustee / Head Master of Dnyanoday Vidyamandir, a school. It is in respect of RCC structure consisting of ground plus 3 floors. On the same day, another notice was addressed by the first Respondent to the same persons in exercise of powers under Section 267 of the said

Act and Sections 53 to 55 of the Maharashtra Regional and Town Planning Act, 1966 alleging that the building is illegal. On 24th November 2014, the Municipal Commissioner of the first Respondent addressed a letter to the Assistant Municipal Commissioner and the Deputy Municipal Commissioner of the same Municipal Corporation recording that the school building is in a dilapidated condition and therefore, it should be ensured that the same is not used for the school.

2. A Writ of Mandamus is prayed for directing the Municipal Corporation to initiate the action of demolition. The Municipal Corporation has filed Affidavit of Smt. Anagha Ashok Pagare in which it is contended that the structure consisting of ground plus four upper floors is being used for running a school in which 1700 students are taking education. The stand taken in the Affidavit is that the said unauthorised building has been constructed on a land belonging to Maharashtra Industrial Development Corporation and therefore, it is the contention that firstly the said Corporation must initiate action by taking recourse to the provisions of the Maharashtra Industrial Development Corporation Act, 1961.

3. However, the learned counsel appearing for the Respondent Nos. 1 to 5 on instruction states that the first

Respondent – Municipal Corporation has initiated action and will take the said action to the logical conclusion.

4. When we made a query to the learned counsel appearing for the added Respondent, whether the letter dated 5th November 2014 2014 (Exhibit “B”) and both notices dated 13th November 2014 (Exhibit “C”) were served to the added Respondent (Applicant in Civil Application No. 538 of 2018), on instructions he states that not only that the notices were served but the said Respondent had submitted a reply to the notices.

5. In the Civil Application filed by the added Respondent the fact that the notices were served and a reply was submitted has not been disclosed. Moreover, in the Civil Application, it is contended that the structure of the school is on privately owned land and not on the land vesting in the MIDC.

6. This is a very serious case where it is alleged that in RCC building consisting of ground plus three / four floors, a school is being run, which is having 1700 students on its roll. The notices and the letters at Exhibits “A” to “C” issued by the Municipal Corporation indicate that, the construction of the building is not only illegal, but the structure is in a dangerous condition.

7. Only because a school is being run in the building that we

are showing indulgence by permitting added Respondent to file a Reply to the notices. We proposed to direct the Municipal Commissioner to pass orders after considering reply.

8. The appropriate Municipal Officer will have to immediately visit the building with a view to ascertain whether the building is in ruinous or dilapidated condition especially in the light of the fact that 1700 students are taking education in the said building.

9. In the Affidavit in Reply filed by the Respondent Nos. 1 to 5, it is claimed that the structural audit report is submitted by the school recording that the overall condition of the school building is good. However, minor repairs of external plaster and crack filling are required to be done. Considering the fact that 1700 students are taking education in the said building, the first Respondent – Municipal Corporation cannot adopt casual approach and simply rely upon the structural auditor's report produced by the school. The Municipal Officers will have to inspect building and take all possible steps with a view ensure that the students are not exposed to any kind of danger.

10. Accordingly, we pass the following order:-

(a) It will be open for the school authorities of the Dnyanoday School run by Dyanoday Shikshan Pracharak

Samiti which is represented by the added Respondent to file reply to both notices dated 13th November 2014 within a period of one month from today. No further time shall be granted. As one of the two notices is issued under Section 260 of the said Act, we direct the Municipal Corporation to consider the reply and to pass an appropriate order in accordance with the law laid down in the case of ***Sopan Maruti Thopate and Another v. Pune Municipal Corporation***¹. The appropriate order shall be passed within a period of two months from today;

(c) We direct the designated officer or any officer nominated by the Municipal Commissioner to immediately visit the building with a view to ascertain the present structural status of the building, in the light of the fact that 1700 students are taking education in the said building.

(d) We make it clear that if any action is required to be taken in accordance with law, the Municipal Corporation will take the action immediately, so as to ensure that there is no danger to the students studying in the school;

(e) We further make it clear that the Municipal Corporation cannot rely upon only the structural audit report submitted

1 1996 (1) Mh. L.J. 963.

by the school authorities and the Municipal Corporation will have to make its own assessment of the structural status of the building and thereafter, take action in accordance with law;

(f) We also make it clear that, we have made no adjudication on the contentions sought to be raised by the added Respondent and also on the issue of title to the land on which the subject building is situated;

(g) The Petition is disposed of with the above directions.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)