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

**WRIT PETITION NO. 7695 OF 2018
WITH
CIVIL APPLICATION (ST) NO. 20802 OF 2018**

Shri Swaminath Gupta and Ors. ... Petitioners
Versus
Thane Municipal Corporation for the City of ... Respondent
Thane

Mr. Mayuresh S. Lagu, for the Petitioners.
Mr. Ajit Ram Pitale, for the Respondent No.2.
Ms. Nisha Mehra, AGP for the Respondent No.3.
Mr. H.V. Kode, with Juilee Ghadge for Intervenor for the Applicant.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATE: 20TH JULY, 2018

PC:-

1. Not on board. Taken on board.
2. Heard the learned counsel appearing for the Petitioners.
Yesterday, the Petition was produced for grant of urgent relief.
Yesterday, the contention raised by the learned counsel appearing for the Petitioners was that in the year 2016, the Petitioners were served with the notices by Thane Municipal Corporation and thereafter, the only notice served by the Municipal Corporation was a notice dated 21st August, 2017 calling upon one of the Petitioners to submit a report by VJTI / ITI. His submission

yesterday was that along with letter dated 24th August, 2017, a structural audit report was submitted by Petitioners to the Respondent No.1 – Corporation. Paragraph Nos. 5, 6 and 7 of this Petition proceed on the footing that on 18th July, 2018, the officers of the Respondent No.2 – Corporation visited the premises on the ground floor which are in possession of the Petitioners and threatened that the demolition of the building will be undertaken on 19th July, 2018. The specific averment made in the paragraph 5 is that no notice since after the notices of the year 2016 was ever served upon the Petitioners, much less a notice requiring Petitioners to vacate the premises. The entire Petition proceeds on the footing that after the Petitioners submitted a structural audit report on 24th August, 2017, no written notice was served to the Petitioners. The cause of action for filing the Petition as set out in paragraph 6 is the threat given by the Municipal Officers to the Petitioners on 18th July, 2018 of demolition without giving any prior notice.

3. Today, when the Petition was called out, the learned counsel appearing for the Respondent No.2 – Corporation produced for perusal of the Court, a copy of the notice dated 7th May, 2018 which was issued to the Petitioners. On instructions of the Petitioners, the learned counsel appearing for the Petitioners

states that the said notice was served to the Petitioner No.1 and thus the Petitioners were await of the said notice. The said notice refers to the structural audit report submitted by the Petitioners. The said notice records that, the report of VJTI submitted by the Petitioners is not satisfactory and therefore, the structural audit report of the entire building is necessary to be obtained. The notice, therefore, calls upon Petitioners to stop the use of the building.

4. In our view, the notice dated 7th May, 2018 was very material and relevant and the Petitioners have indulged in suppression of material facts by not disclosing the service of the said notice. In fact, the averments made in paragraphs 5 and 6 are completely false as the Petitioners have stated that no notice after the notice in the year 2016 was ever served upon the Petitioners. Moreover, the Petitioners have not stopped the use of the premises in their possession as directed by the notice dated 7th May, 2018.

5. Writ jurisdiction under Article 226 of the Constitution of India is always discretionary and equitable. In view of suppression of material facts by the Petitioners, no case is made out for entertaining this Petition.

6. The Petitioners will have to be saddled with costs which is quantified at Rs.25,000/- which shall be payable by the Petitioners to the Respondent No.2 – Corporation within a period of four weeks from today. While rejecting the Petition, we must note here that the notice dated 7th May, 2018 is not a notice of demolition under Section 264 of the Maharashtra Municipal Corporations Act, 1949. But this notice merely calls upon the Petitioner to immediately stop the user of the premises in their possession.

7. Subject to what is observed above, the Petition is rejected. The Petitioners shall pay cost quantified at Rs.25,000/- to the Respondent No.2 – Corporation within four weeks from the date on which this order is uploaded.

8. All pending applications stand dispose of.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)