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

WRIT PETITION (STAMP) NO.35046 OF 2018

Mukund Parekh and Anr.	...Petitioners
Versus	
Mira-Bhayandar Municipal Corporation, Through it's Municipal Commissioner and Ors.	...Respondents

***WITH
WRIT PETITION (STAMP) NO.35048 OF 2018***

Mehul D. Parekh	...Petitioner
Versus	
Mira-Bhayandar Municipal Corporation, Through it's Municipal Commissioner and Ors.	...Respondents

***WITH
WRIT PETITION (STAMP) NO.35049 OF 2018***

Gautam Sukanraj Jain	...Petitioner
Versus	
Mira-Bhayandar Municipal Corporation, Through it's Municipal Commissioner and Ors.	...Respondents

***WITH
WRIT PETITION (STAMP) NO.35051 OF 2018***

Uday Anandrao Patil	...Petitioner
Versus	
Mira-Bhayandar Municipal Corporation, Through it's Municipal Commissioner and Ors.	...Respondents

***WITH
WRIT PETITION (STAMP) NO.35052 OF 2018***

Vipul Bhailal Dodia ...Petitioner
Versus
Mira-Bhayandar Municipal Corporation,
Through it's Municipal Commissioner and Ors. ...Respondents

**WITH
WRIT PETITION (STAMP) NO.35053 OF 2018**

Manish Mangilal Doshi ...Petitioner
Versus
Mira-Bhayandar Municipal Corporation,
Through it's Municipal Commissioner and Ors. ...Respondents

Mr.S.S.Purohit a/w Mr.Chirag Desai and Mr.Latesh Fariya, i/b Solicis Lex,
for the Petitioners.

Mr. R.S.Apte, Senior Counsel a/w Mr.N.R.Bubna, for the Respondent
Nos.1 and 2.

Ms.K.R.Kulkarni, A.G.P. for the Respondent- State.

**CORAM : RANJIT MORE &
REVATI MOHITE DERE, JJ.**

DATE : 11th DECEMBER, 2018

P.C. :

1. Heard.

2. The Petitioners, by the aforesaid Petitions, are challenging the

notice dated 7th December, 2018, directing the Petitioners to produce the 7/12 extract, building permission and construction plan, within 24 hours, in respect of their shops/house etc., and if the Petitioners do not submit the same within the stipulated period, they will be removed from the said unauthorized construction or else the Corporation will demolish the same.

3. Mr.Purohit, learned counsel for the Petitioners inviting our attention to the said notice submitted that though the notice is dated 7th December, 2018, it was affixed on the Petitioners premises on 8th December, 2018, at 12'noon. He submitted that the next day was Sunday and therefore holiday and that the Petitioners at 10.30 a.m. on Monday, went to the Corporation's office to submit the documents, however, before that, the action for demolition started and some portion of the structure belonging to the Petitioners was demolished. Mr.Purohit, relying upon the decision laid down by the Apex Court in the case of ***Sopan Maruti Thopte and Another v/s Pune Municipal Corporation and Another***¹, submitted that due opportunity was not given to the Petitioners, to show that the construction in question, was unauthorized. As a matter of right, the Petitioners are contending that the said structure is pretty old and is

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standing since the year 1988.

4. Mr.Ram Apte, learned senior counsel for the Respondent Nos.1 and 2, contested the Petitions. He submitted that the construction is made by the Petitioners on the road and therefore the same is required to be removed by exercising the powers under Section 231 of the Maharashtra Municipal Corporations Act and that accordingly the action is taken.

5. Since it is the allegation of the Petitioners that the subject structure is pretty old and is standing since the year 1988, we have our own doubt, whether the Corporation can resort to Section 231 of the Maharashtra Municipal Corporations Act. It is also the specific contention of the Petitioners, that they have the documents showing that they are not only the title holders but they have also got the permission from the Grampanchayat at the relevant time.

6. In the light of the submissions made hereinabove, and especially in the light of the decision laid down by the Apex Court in the case of ***Sopan Maruti Thopte (Supra)***, we are of the opinion that the

Corporation has not given proper opportunity to the Petitioners to show-cause, why the subject structure should not be removed. Mr.Apte, learned senior counsel for the Respondent Nos.1 and 2, at this stage, having taken instructions from the concerned Officer, who is present in the Court, makes a statement that in response to the notice impugned in the Petitions, the Petitioners be allowed to submit the documents, in support of their case, within a period of seven days from today; that the Corporation/Designated Officer will thereafter consider the said documents and pass a speaking order and communicate the same to the Petitioners. Statement accepted.

7. In the light of the above, the Petitions are disposed of by passing the following order:-

- a) The Petitioners are at liberty to submit the documents asked for in response to the impugned notice, to the Respondent-Corporation/Competent Officer, within a period of seven days from today;
- b) In the event, such documents are not submitted by the Petitioners, the Corporation is at liberty to proceed, in accordance with law;

- c) In case, such documents are submitted by the Petitioners, within the stipulated period, the Corporation shall consider the same and pass appropriate orders, within a period of seven days from filing of the objection and the Corporation shall communicate the order to the Petitioners;
 - d) In the event, such order is adverse and against the interest of the Petitioners, the same shall not be implemented for a period of ten days from the date of communication to the Petitioners;
 - e) Till the date, the Corporation passes the order, both the parties shall maintain status-quo, regarding the subject structure, as of today.
8. The Writ Petitions are accordingly disposed of.

REVATI MOHITE DERE, J.

RANJIT MORE, J.