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

WRIT PETITION (L) No. 321 OF 2018

M/s. Laboratories Griffon Pvt. Ltd. ... Petitioner
Vs.
Mumbai Municipal Corporation
through Designated Officer ... Respondents

AND
WRIT PETITION (L) No. 327 OF 2018

M/s. Franco India Pharmaceutical Pvt. Ltd. ... Petitioner
Vs.
Mumbai Municipal Corporation
through Designated Officer ... Respondents

Mr. Nitin Dalvi, for the Petitioner in both the petitions.
Mr. K. H. Mastakar, for the Respondent – BMC in both the petitions.

CORAM : A. S. OKA, &
P. N. DESHMUKH, JJ.

DATE : JANUARY 30, 2018

PC :

1. Not on the board. Taken on the board.
2. Heard the learned counsel for the Petitioners and the

learned counsel for the Respondent – BMC. The learned counsel for the Respondent seeks time to take instructions. For the reasons recorded hereinbelow, we are of the view that this is a fit case where time should not be granted and both the petitions should be disposed of immediately.

3. The facts of both the petitions are more or less identical. The Petitioners have been served with the notices issued under Section 351 of Mumbai Municipal Corporation Act, 1888 (for short “the said Act”). The Petitioners submitted reply on 12th January, 2018 in the office of the Assistant Commissioner, G/S Ward. The photo copies of the office copy of the reply bearing the acknowledgement have been annexed. Apprehending that an action of demolition will be taken without passing an order on the notice under Section 351 of the said Act, the Petitioner in both the petitions filed Writ Petition (L) Nos. 164 of 2018 and 165 of 2018. Both the petitions were disposed of by a common order 18th January, 2018. Paragraphs 2 to 5 of the said order read thus:

“2. Even according to the case of the petitioners, to the notice issued under section 351 of the Mumbai Municipal Corporation Act, 1888, the petitioners have filed a reply

and no order has been passed on the basis of the said reply. The learned counsel appearing for the petitioners, on instruction, states that both the petitioners do not desire to file any further reply. We accept the said statement.

3. The Municipal Corporation will have to follow the law laid down in the case of ***Sopan Maruti Thopate v. Pune Municipal Corporation***¹
4. Hence, even going by the case of the petitioners, as of today, there is no apprehension that the structures will be demolished without following due process of law.
5. Hence, both the petitions are disposed of.”

4. The challenge in the petitions is to the orders dated 24th January, 2018 passed under Section 351 of the said Act. The said order proceed on the assumption that there was no reply submitted by the petitioners to the notices under Section 351 of the said Act.

5. Even the order dated 18th January, 2018 which was passed after hearing the learned counsel for the Respondent recorded that the reply to the notices issued under Section 351 of the said Act has been filed.

6. Thus, the orders impugned are in breach of the principles

1 AIR 1996 Bom 304

of natural justice. The impugned orders also show the non-application of the mind by the Designated Officer.

7. Accordingly, we dispose of both the petitions by passing the following order:

- (i) The impugned orders dated 24th January, 2018 (Exhibit “F” in both the petitions) are hereby quashed and set aside;
- (ii) We direct the Designated Officer of the concerned Ward to pass fresh orders on the notices issued under Section 351 of the said Act on the 9th January, 2018 after considering the reply submitted by the Petitioner on 15th January, 2018 and the documents, if any, produced alongwith the reply;
- (iii) We make it clear that we have not made adjudication on merits on notices issued under Section 351 of the said Act;
- (iv) Needless to add that the Municipal Corporation is bound

by the directions given by the Division Bench of this Court in the case of *Sopan Maruti Thopate Vs. Pune Municipal Corporation (supra)*;

- (v) Both the petitions are disposed of in the aforesaid terms.

Sd/-
[P. N. DESHMUKH, J.]

Sd/-
[A. S. OKA, J.]

Vinayak Halemath