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

WRIT PETITION (L) NO. 1010 OF 2018

The Secretary of the Home For the Aged ... Petitioner
Versus
The Mumbai Municipal Corporation at Gr. ... Respondents
Mumbai & Ors.

Mr. Dormaan J. Dalal, for the Petitioner.
Ms. Vandana Mahadik, for the Respondent – BMC.

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATED: 4TH APRIL 2018.

PC:-

1. Heard the learned counsel appearing for the Petitioner and the learned counsel appearing for the Respondent.
2. Rule. The Respondents waive service. Hence, forthwith taken up for final disposal.
3. The Petitioner is a public charitable trust duly registered under the Maharashtra Public Trust Act, 1960. The Petitioner has been running old age home on the property described in the opening part of this Petition. It is stated in the Petition that the old age home was established in the year 1958 which accommodates approximately 105 senior citizens most of whom are above the age of 65 years. It is the case made out in the Petition that the

Petitioner desires that the old age home should be reconstructed as the structure had become weak. It is stated in the Petition that the condition of the structure was such that it could not be repaired. Therefore, the Petitioner applied for grant of development permission to the first Respondent – Corporation and accordingly, IOD was issued on 23rd February 2017. It is pointed out that for reconstructing the building, it was necessary to cut certain number of trees on the property and therefore, an application was made by the Petitioner on 11th December 2017 (Exhibit 'C') addressed to the Deputy Superintendent of Garden seeking permission to cut 16 trees. The said application was delivered in the office of the Deputy Superintend of Garden on 12th December 2017.

4. It is pointed out that after the said application was made, concerned officer orally informed that the Petitioner can be permitted to cut 4 trees, replant 8 trees and transplant 13 trees. It is the case made out in the Petition that in view of the order passed by a Division Bench of this Court on 21st February 2018, the Tree Authority established under the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 (for short “the said Act”) cannot function and therefore, a permission has not been granted to the Petitioner for felling of trees. In the main

Petition, it is stated that the Petitioner cannot carry on further construction as the application made for grant of permission for felling trees is kept pending.

5. Though in the Petition, a specific contention has been raised that permission is deemed to have granted in the light of provisions of sub section (5) of Section 8 of the said Act, by tendering an additional Affidavit of Mother Hilda Lemos, the President and Authorised Representative of the Petitioner, the said plea has been given up and the Petition is confined to seeking a direction to decide application dated 11th December 2017.

6. Our attention is invited to the order dated 21st February 2018 by which ad interim relief was granted in PIL No. 46 of 2015. Paragraph 3 of the order dated 21st February 2018 which is the ad interim order, reads thus :

3. There are several issues to be examined about the exercise of power by the Municipal Commissioner under amended Section 8(6). The question is whether the power conferred on the Municipal Commissioner is totally unguided and arbitrary inasmuch as he is not an expert in the field of horticulture. The Act does not provide that before exercise of power, he has to consult the experts in the field. Hence, we restrain him from exercising the power under the impugned Amended Act of granting permission for cutting or felling of trees. However, this order will not prevent the Municipal Commissioner from granting permission

in case of exceptional urgency when he is satisfied that unless permission is granted for felling or cutting of the trees, it may result in causing injury to human being or it will cause damage to any property.”

7. In the additional Affidavit following facts have been set out :-
 - a) with a view to enable reconstruction of the old age home, the Petitioner shifted 71 persons staying in the old age home at distant places at Jabalpur, Kolkatta, Bangalore, Mangalore, Guntur and Erode;
 - b) In February 2017, a portion of the old age home admeasuring 1,15,000 square feet was demolished;
 - c) as remaining 40 persons staying in the old age home could not be accommodated elsewhere, they continue to reside in highly congested condition in the portion of the old age home which was not demolished. The area of the said portion is of 11,000 square feet; and
 - d) Out of a 40 senior citizens, 15 are men and 25 are women. In the area of 11,000 square feet, the Petitioner is running kitchen, laundry services etc. apart from providing accommodation to 12 sisters / nuns. There is a medical unit. There are only ten toilets and five bathrooms.
8. In the Writ Petition, it is pointed out that the old age home

was in dilapidated condition which could not be repaired and that is the reason why this decision was taken to reconstruct the same. In fact, there is a specific averment in paragraph 4 that the old age home is structurally weak and is in a dilapidated condition and is in danger of collapsing.

9. In short, on conjoint reading of the Petition and the statements made in the additional Affidavit, it is apparent that 40 inhabitants who are senior citizens along with 12 sisters / nuns are residing in small portion of the old age home which is not demolished.

10. Thus, we dealing a case of 40 senior citizens who have no option but to reside in the old age home due to various difficulties faced by them. They are residing in a portion of the old age home which is not demolished, but which is not in a good condition. The averments made in the Petition as well as additional Affidavit have not been controverted by the Respondents. We are dealing with 40 senior citizens who are not able to make arrangements for their stay elsewhere and according to the case made out in the Petition, the Petitioner has no option but to accommodate them in the balance area which is not demolished.

11. If the new building is not constructed and if the said 40

senior citizens continue to reside in a part of the old building , it will certainly a case of threat to their safety. Therefore, in our view, the present case will be covered by an exception carved out in paragraph 3 of the order dated 21st February 2018 and therefore, the Municipal Commissioner will be entitled to deal with the application made by the Petitioner and to grant permission, if the Petitioner is otherwise lawfully entitled to grant of such permission. As stated in paragraph 4 of the additional Affidavit, the Petitioner is confining the prayer to what is set out in paragraph 2.

12. In view of the statement made in paragraph 2, we make it clear that the Petitioner will not be entitled to undertake a felling or cutting of trees on the basis of plea of deemed permission as the said plea is not available to the Petitioner.

13. Hence we dispose of the Petition by passing the following order:-

a) In view of the reasons recorded above, we hold that the case of the Petitioner will be covered by an exception carved out in the second part of the paragraph 3 of order dated 21st February 2018 in PIL No. 46 of 2015;

b) We, accordingly direct the Municipal Commissioner to

decide the application dated 11th December 2017, in the light of the statements made in paragraph 2 of the additional Affidavit of the Petitioner as expeditiously as possible and preferably within a month from the date on which this order is uploaded;

c) We make it clear that we have made no adjudication on merits of the said application and it is for the Commissioner to take a proper decision in accordance with law;

d) In view of the above direction, no other relief is required to be granted to the Petitioner at this stage;

e) Even if a copy of this order is not available, the Advocate for the Respondents shall communicate this order to the Municipal Commissioner who shall act upon the communication issued by the Advocate for the Respondents.

f) All concerned to act upon an authenticated copy of this Order.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)