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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.1563 OF 2018

WITH

WRIT PETITION (L) NO.1565 OF 2018

Sandeep Kumar Housilaprasad Jaiswar ...Petitioner

vs

Municipal Corporation of Greater Mumbai And 4 Ors. ...Respondents

WITH

WRIT PETITION (L) NO.1565 OF 2018

Housilaprasad Badliram Jaiswar ...Petitioner

vs

Municipal Corporation of Greater Mumbai And 4 Ors. ...Respondents

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Mr. V.Y. Sanglikar, a/w. Ms. Vaishali Ugale, for the Petitioner.

Mr. Ashwin Sakolkar, a/w. Ms. Pooja Yadav, for Respondent Nos. 1 and 2-MCGM in WPL/1563/18.

Ms. Pooja Yadav, for Respondent Nos. 1 and 2-MCGM in WPL/1565/18.

Mr. Yadunath Chaudhari, a/w. Mr. Susmit Phatale, for Respondent No.5 (Society).

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CORAM : S.C. GUPTE, J.

DATED : 4 MAY, 2018

P.C. :

. The Petitioners in Writ Petition (L) No.1563 of 2018 are permitted to amend the petition by substituting Exhibit 'M'. Amendment to be carried out within two weeks from today. Re-verification is dispensed with.

2. Heard learned Counsel for the Petitioners and the learned Counsel for the Municipal Corporation as well as learned Counsel for Respondent No.5 Society.

3. The petition challenges a speaking order passed by the Assistant Engineer, Municipal Corporation of Greater Mumbai, under the provisions of Section 351 of the Mumbai Municipal Corporation Act. There were show cause notices issued to about 26 structures existing in the plot belonging to Respondent No.5 Society. The show cause notices alleged that these structures were erected without permission from the Competent Authority and required the occupants to show cause why the structures should not be removed or pulled down. Representations were made on behalf of some of the occupants and they were heard by the Assistant Engineer. In his impugned order dated 19 April 2018, the Assistant Engineer, *inter alia*, observed that there was no documentary evidence to prove the existence of the notice structures prior to the datum line. The Assistant Engineer observed that, in the premises, the noticee occupants failed to prove either that the notice structures were authorised, that is to say, they were constructed in accordance with the permission granted by the Competent Authority, or that they existed prior to the datum line. Accordingly, the occupants were directed to remove the structures, failing which the structures were said to be proposed to be demolished by the Municipal Corporation.

4. These speaking orders were challenged by different noticee occupants in two separate petitions. Writ Petition (L) No.942 of 2018

was filed in respect of Structure Nos.6 to 16 and 22 to 26, whilst Writ Petition (L) No.1411 of 2018 challenged the speaking order in respect of Structure Nos.17 to 21. In its main order dated 19 April 2018, passed in Writ Petition (L) No.942 of 2018, this Court considered the grievance of the Petitioners at length. The main grievance, as noted by this Court, was that the structures were in existence prior to the datum line and that there was adequate material produced by the Petitioners before the Assistant Commissioner in proof of such existence. This Court observed that it was apparent from the record of the case that there was no material produced before the authority to show that the offending structures were in fact in existence prior to the datum line. The old communications from estate department of the Government as well as the rent receipts issued by the Society for the structures as well as open plot and representations made before the Municipal Corporation based on this material were considered by this Court. This Court observed that there was no material to prove the existence of any particular structure or area as of the datum line and that, in the premises, the impugned order passed by the Assistant Engineer could not be faulted either as perverse or vitiated by any malafides, legal or otherwise. This Court observed that, in the premises, there was no occasion to interfere with the impugned order under Article 226 of the Constitution of India. The petition was, accordingly, dismissed. The second petition, namely, Writ Petition (L) No.1411 of 2018, in respect of Structure Nos. 17 to 22, was disposed of by an order dated 26 April 2018. It was accepted by learned Counsel for the Petitioners, who claimed to be noticee occupants of Structure Nos. 17 to 22, that the same reasons, as were discussed in the order dated 19 April 2018, were applicable in case of Structure Nos. 17

to 22 and that the petition could be disposed of by a similar order. The petition was accordingly dismissed and the ad-interim protection against coercive steps in pursuance of the impugned order was extended upto 10 May 2018, as in the case of Writ Petition (L) No.942 of 2018. Now some other occupants, claiming to be noticees for Structure Nos. 17, 20 and 21, have approached this Court by way of these two separate petitions. The challenge in these two petitions is to the same order, which is passed by the Assistant Engineer of the Municipal Corporation on 19 April 2018, in response to the show cause notice originally issued to 26 structures and based on representations received from the noticee occupants. The case of the occupants in respect of these structures having already been considered in terms of the order dated 26 April 2018 in Writ Petition (L) NO.1411 of 2018, which was, in turn, based on the reasons given in the order dated 19 April 2018 passed in Writ Petition (L) No.942 of 2018, the same grievance cannot be heard on behalf of other noticee occupants claiming to be occupants of the same structures. There is nothing in these petitions, which requires this Court to take a different view.

5. The petitions are, accordingly, dismissed. No order as to costs.

6. As in the case of the other writ petitions, decided on 19 April 018 and 26 April 2018, ad-interim protection against coercive steps in pursuance of the impugned speaking order, shall continue to operate in the case of the present Petitioners upto 10 May 2018.

(S.C. GUPTE, J.)