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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2319 OF 2017

The Chembur General Stall
Holders Marketing Association
and others ...Petitioners
vs.
The State of Maharashtra & Ors. ...Respondents

Mr.S.G.Deshmukh i/b Mr.Sanket Deshpande for the
Petitioners
Mr.Manish Upadhyay, AGP for the respondent No.1
Mr.A.Y.Sakhare, Senior Counsel a/w Ms K.H.Mastakar
and Mr.Bhavik Manek for MMC
Ms Sharmila Deshmukh for respondent No.3
Mr.Nishant Sashidharan i/b Ms Sonu Tandon for
respondent No.4
Mr.Gaurav Joshi, Senior Counsel a/w Ms Neeta Jain
and Ms Pooja Shah i/b M/s.Dhruve Liladhar & Co. for
respondent No.5

CORAM : A.S.OKA, &
RIYAZ.I.CHAGLA,JJ.
DATE : MARCH 5, 2018

P.C.:

1 Heard the learned counsel for the parties. We have perused the prayers made in this petition under Article 226 of the Constitution of India. As far as the petitioners' existing shops are concerned, admittedly, suits have been filed by them in the City Civil Court at Mumbai for challenging the notices issued by the Mumbai Municipal Corporation under section 314 of the Mumbai Municipal Corporation Act, 1888 (for short 'the said Act'). Paragraph 19 of the petition discloses the

particulars of 12 suits filed by the petitioners and the fact that on 9th May 2012, ad-interim relief has been granted in terms of prayer clause (a) of the Notice of Motion. Our attention is invited to the order dated 26th April 2016 passed in the Notice of Motion in one of the 12 suits by which the learned Judge of the City Civil Court has granted interim relief in terms of the prayer clause (a) of the Notice of Motion till further orders with liberty to the Mumbai Municipal Corporation to consider the reply and documents of the plaintiffs, decide their eligibility and to submit a report. Even according to the case of the petitioners, ad-interim relief granted in terms of prayer clause (a) in the suits filed by the petitioners has not been vacated. In this view of the matter, prayers (d) and (e) of this petition which seek relief in respect of the existing shops of the petitioners cannot be considered.

2 Only other substantive prayers in this petition are prayer clauses (b) and(c). In substance, the prayers make a grievance regarding development permission granted by the Mumbai Municipal Corporation to the fifth respondent in the year 2008. Apart from the fact that the development permission granted in the year 2008 is sought to be challenged in the present writ petition filed in the year 2017, our attention is invited to the representation dated 22nd August 2012 made by the petitioners to the Municipal Commissioner (Exhibit-ZB), the representation dated 28th June 2017 to the

Municipal Commissioner (Exhibit-ZD) and the representation dated 19th July 2012 to the Hon'ble Chief Minister (Exhibit-ZE) and the representation dated 24th July 2017 to the Municipal Commissioner (Exhibit ZF).

3 Without going to the preliminary objections raised by the respondents and without going into the aspect of delay, it will be appropriate if we dispose of the petition by directing the Municipal Commissioner to decide the representations at Exhibits ZB, ZD and ZF. Accordingly, we are of the view that subject to issuing directions to consider the representations made by the petitioners, this petition need not be entertained.

4 Accordingly, we pass the following order:

(I) In view of pendency of the suits in the City Civil Court, Mumbai prayers (d) and (e) cannot be entertained in this petition under Article 226 of the Constitution of India;

(II) We direct the Municipal Commissioner of the Mumbai Municipal Corporation to look into the representations dated 22nd August 2012, 28th June 2017 and 24th July 2017 (Exhibits ZB, ZD and ZF) respectively. It will be open for the Municipal Commissioner or any officer nominated by him to hear all concerned parties apart from the petitioners before deciding the representations;

(III) The Municipal Commissioner shall

take appropriate decision on the said representations within a period of three months from today. Copies of the decision be supplied to the parties to the petition;

(IV) We make it clear that we have issued aforesaid directions without going into the preliminary objections raised by the concerned respondents;

(V) We make it clear that we have made no adjudication on the merits of the grievances made in the representations;

(VI) Writ petition is disposed of subject to above directions.

(RIYAZ.I.CHAGLA,J.)

(A.S.OKA,J.)