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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.471 OF 2014

Achintya Mukherjee & Anr.	...Petitioners
vs.	
Municipal Corporation of Greater Mumbai and others	...Respondents

Mr.Mihir Desai, Senior Counsel a/w Ms N.V.Sanglikar
for the Petitioners
Mr.Sukanta Karmakar, AGP for State
Ms Vandana Mahadik for the respondent-MMC
Dr.Birendra Saraf a/w Mr.Vishal Karande and
Mr.Kalpesh Mehta and Ms Urvi Tamhane i/b Pravin
Mehta and Mithi & Co. for respondent No.8

CORAM : A.S.OKA, &
P.N.DESHMUKH, JJ.
DATE : FEBRUARY 7, 2018

P.C.:

1 Heard the learned senior counsel for the petitioners. It is true that the petitioners are seeking implementation of the notices under sub-section 1 of section 53 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'MRTPA Act') issued on 16th March 2003 and 22nd June 2013. The said notices alleged that by demolishing a portion of compound wall, M.S.Gate is illegally installed. The entire petition proceeds on the footing that as a result of the said action of putting the M.S.Gate, the contesting respondents have been allegedly using the development plan road in between plot No.92 and final Plot No.84 on the other hand. If the petitioners are claiming exclusive right of way over

the said development plan road and if the contention of the petitioner is that the contesting respondents are not entitled to use the same, the petitioners will have to approach the Civil Court and establish their exclusive right. There is also a prayer made enjoining the Mumbai Municipal Corporation to take action under clause (b) of sub-section (6) of section 53 of the MRTTP Act. In fact the said order was made by the Mumbai Municipal Corporation which has been stayed in the Writ Petition No.2747 of 2014. The first petitioner is a party to the said writ petition.

2 As far as the subject notices issued under sub-section 1 of section 53 are concerned, as of today, there is nothing on record to show that either the operation of the notices has been stayed or that the said notices have been withdrawn. If the petitioners want to seek enforcement of the said notices on the footing that they have exclusive right of way, they have a remedy to approach the Civil Court and to establish their right. If the petitioners are right in their contention, the petitioners can always seek injunction preventing the use of the said Gate even assuming that it is authorized. Therefore, we decline to entertain this petition and the same is disposed of.

3 We, however, make it clear that if the notices dated 16th March 2003 and 22nd June 2013 issued under sub-section 1 of section 53 of the MRTTP Act are enforceable, the same can be always enforced by the

Mumbai Municipal Corporation in accordance with law.

4 We may clarify that we have made no adjudication on the legality and validity of the said two notices.

(P.N.DESHMUKH,J.)

(A.S.OKA,J.)