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

WRIT PETITION NO.3290 OF 2018

Bandra Holy Family Hospital Society	...Petitioner
Versus	
Municipal Corporation of Greater Mumbai	
Through Municipal Commissioner and Ors.	...Respondents

Mr.S.C.Naidu, i/b C. R. Naidu & Co., for the Petitioner.

Ms.K.H.Mastakar, for the Respondent - M.C.G.M.

Mr.Doodhnath Saroj, for the Respondent No.5.

***CORAM : RANJIT MORE &
REVATI MOHITE DERE, JJ.***

DATE : 4th DECEMBER, 2018

P.C. :

1. Mr.Naidu, learned counsel for the Petitioner makes a statement that he is restraining his relief to prayer clause (a), which reads as follows:-

- (a) That this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ or Order or Direction under Article 226 of the Constitution of India directing the Respondent Nos.1 to 4 to-

- i. Forthwith inspect the illegal structures complained of in this Petition and marked with the alphabets 'B' and 'C' on the sketch and if the said constructions / structures are found to be unauthorised then to forthwith demolish/remove the said illegal structures erected by the Respondent No.5;
 - ii. Inspect the other tenanted premises on plot No.C-20 and make a Report to this Hon'ble Court, within such time as may be granted as to any illegal addition, alteration or modification carried out in any of the said tenanted premises;
 - iii Ensure that compulsory open space is maintained and all obstructions on compulsory open space, approach road/lane are removed and demolished and kept free from any encroachment.
2. So far as the relief claimed in prayer clause (a)iii. is concerned, one Bharat Sopanrao Momale, Designated Officer/Assistant Engineer (Building and Factory) H/West Ward has filed an affidavit dated 3rd December, 2018. In paragraphs 5, 6 and 7 of the said affidavit, following statements are made:-

“5. I say that accordingly, this office staff has visited the site situated beside Holy Family Hospital, Hill Road, Bandra West, Mumbai – 50, H/West with petitioner for the verification of the unauthorized construction. I say that during inspection it

was noticed that one structure on open land with G.I. Sheet wall and G.I. Sheet Roof is observed. The copy of the said inspection report dated 30.11.2018 is annexed hereto and marked as “Exhibit – A”. Similarly, newly constructed first floor to the existing ground floor structure with brick masonry wall and A.C.Sheet roof and copy of said inspection report dated 30.11.2018 is annexed hereto and marked as “Exhibit-B”.

6. Accordingly, this office has issued notice under Section 351 of Mumbai Municipal Corporation Act 1888 to Mr.Michael Rocha vide no.HW/DO2HW/101/351 – MMC Act/HW/964 No.1/01.12.2018 for unauthorized construction of structure on open space with G.I. Tin sheet wall and G.I. Sheet roof and the same is annexed hereto and marked as “Exhibit – C”.
7. And another notice was also issued under Section 351 of Mumbai Municipal Corporation Act 1888 to Mr.Michael Rocha vide no. HW/DO2HW/101/351-MMC Act/HW/966 No.1/ 01.12.2017 for unauthorized vertical extension i.e. first floor to the existing structure with brick masonry wall and A.C.Sheet roof and the same is annexed hereto and marked as “Exhibit-D”.

3. Thus, the prayer clause (a) stands redressed.

4. Two show-cause-notices are issued under Section 351 of the Mumbai Municipal Corporation Act, to the Respondent No.5, in respect of subject alleged un-authorised construction. Learned Counsel for the M.C.G.M. submits that the said show-cause-notices will be taken to its logical end, as expeditiously as possible and preferably within a period of two months from the date of reply from the Respondent No.5, to the said notices. Statement accepted.

5. If the reply is not filed within the stipulated period, the Corporation is at liberty to proceed.

6. In the event, the Respondent No.5 decides to challenge the said notices issued by the Corporation, under Section 351, before the City Civil Court, advance notice thereof shall be given to the Petitioner.

7. It is made clear, that this order shall not be construed as an expression of any opinion on merits of the matter and the Corporation shall

take appropriate decision, after hearing all concerned, in accordance with law.

8. The Petition is accordingly disposed of.

REVATI MOHITE DERE, J.

RANJIT MORE, J.