

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

NOTICE OF MOTION (LDG.) NO. 829 OF 2017
IN
WRIT PETITION NO. 3046 OF 2017

Housila Prasad B. Jaiswar and others.	...	Applicants.
In the matter between		
Darshan Developer and another.	...	Petitioners.
V/s.		
Municipal Corporation of Greater Mumbai		
and others.	...	Respondents.

Mr.VY.Sanglikar for the applicants.

Mr.H.C.Pimple for the respondent- MMC.

Ms.Jyoti Chavan, AGP for the respondent- State.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 8th March 2018.

PC.:

Non on board. Taken up on board.

2. Heard the learned counsel appearing for the applicants. The applicants were not parties to the disposed of writ petition in which this notice of motion was taken out. Prayer (b) is for modification of the final order dated 29th November 2017 passed in writ petition. As one of the two Hon'ble Judges forming a part of the Division Bench which passed the

said order is not available at the Principal Seat at Mumbai and the other Hon'ble Judge who is available is not sitting singly, this notice of motion will have to be heard by this Bench. Prayer clauses (a) and (b) are the only substantive prayers in this notice of motion. As far as prayer (a) is concerned, it seeks virtually a writ of mandamus against the petitioners in the disposed of petition. Even if the applicants were party respondents in the said disposed of petition, they could not have sought such a direction against the petitioners in the said petition. Accordingly prayer clause (a) cannot be granted.

3. As far as prayer (b) is concerned, after having perused the order dated 20th September 2017 and the final order dated 29th November 2017 passed in this writ petition and after considering the submissions made by the learned counsel appearing for the applicants, we find that there is absolutely no necessity of issuing any clarification. The order dated 20th September 2017 refers only to the eligibility of the tenants and occupants and the subject matter of the said order is the determination of eligibility of the occupants and tenants.

4. All that the order dated 29th November 2017 directs is that the Mumbai Municipal Corporation shall take an action of demolition of unauthorized structures and for removal of encroachment. It is obvious that demolition will have to be carried out by following due process of law. In fact, the learned counsel appearing for the applicants has tendered across the bar notices served to the applicants under section 351 of the Mumbai Municipal Corporation Act, 1888. The notices are only

show cause notices which will have to be taken to a logical conclusion after following the law laid down in *Sopan Maruti Thopte v. Pune Municipal Corporation*¹.

5. Hence, there is absolutely no merit in the notice of motion and the same is dismissed.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)

¹ AIR 1996 Bom 304