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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8599 OF 2023
WITH
WRIT PETITION NO.8600 OF 2023
WITH
WRIT PETITION NO.8601 OF 2023

Nitin S. Handedeshmukh & Ors.	...Petitioners
V/s.	
Pune Municipal Corporation & Anr.	...Respondents

Ms.Shradha Sawant for the Petitioners in all the Writ Petitions.

Mr.R.M. Pethe for Respondent Nos.1 and 2 – Corporation in all the above Writ Petitions.

CORAM : SUNIL B. SHUKRE &
RAJESH S. PATIL, JJ.
DATE : 12TH JULY, 2023.

P.C. :-

1. Rule. Rule made returnable forthwith. Heard finally by consent of learned counsel for the parties.
2. These Petitions involve common issue arising from challenge to demolition notices whereby the Corporation has called upon these Petitioners to remove the unauthorized kaccha constructions within 24 hours from the date of receipt of the notices.
3. According to the learned counsel for the Petitioners, no demolition notice to each of the Petitioners could have been issued

directly without issuing show cause notice and if it had been done, that would have enabled the Petitioners, not only to explain their stand but also take necessary steps for getting regularized the kaccha constructions made by them. It is also submitted that these constructions are in existence since when the area where they are situated, did not fall within the limits of Pune Municipal Corporation, and was within the limits of Gram Panchayat and at that point of time, there was no requirement in law to obtain any permission from Gram Panchayat. She also submits that the municipal tax is being paid by these Petitioners in respect of each kachha constructions which itself gives relevance to the fact that these constructions could not be called strictly as unauthorized constructions, in as much as there is license issued to each of the Petitioners under the provisions of the Shops and Establishment Act.

4. Firstly, we must say that when the structures are completely unauthorized, there is no requirement for the Corporation to issue show cause notice to the Petitioners to explain as to why these kaccha constructions should not be called as unauthorized. There is not a single document placed on record by each of the Petitioners which would even remotely suggest that these structures have some backing of law. The license issued under the provisions of the Shops and Establishment Act is no evidence of the fact that the

structures are authorized. Similarly, the tax receipt also does not indicate in any way that the structures could be called as authorized. That apart, a copy of the tax receipt has been filed in Writ Petition Nos.8600 of 2023 and 8601 of 2023 and no tax receipt is filed in Writ Petition No.8599 of 2023. A bare perusal of these tax receipts show that these tax receipts have been issued not in respect of kachha constructions but in respect of the houses of the persons named therein. These tax receipts therefore, cannot be understood as supporting even indirectly, the stand of the Petitioners. If this is so, we find that there is nothing wrong or illegal about the impugned demolition notices. Besides, they also also grant time to the Petitioners to remove these unauthorized constructions.

5. The learned counsel for the Petitioners has relied upon an order dated 16th June, 2022 passed by a Co-ordinate Bench of this Court in a group of Petitions starting with Writ Petition No.5430 of 2022 to support her contention that due to pendency of regularization application, some protection can be granted to the persons like the Petitioners. While there can be no dispute about this proposition of law that during the course of regularization application, an order for protection is granted, it must be shown that the facts of the cases are identical. On going through the order dated 16th June, 2022, we find that the facts of those Petitions do not become clear, thus and so, it is

difficult for this Court to hold that since the facts of those cases are identical to or substantially similar with the facts and similar view can also be taken by this Court in these matters.

6. In this view of the matter, we find that there is no substance in the stand taken by the learned counsel for the Petitioners. However, we grant opportunity to the Petitioners to approach the Corporation for seeking regularization of the disputed structures, if they have any right in law to do so and if this regularization application is filed in accordance with law within a period of one week from the date of this order, the same shall be decided appropriately by the Corporation within one week from the date of receipt of the application and till that time, the Corporation is expected to not take any coercive steps hastily.

7. Rule is made absolute in above terms.

(RAJESH S. PATIL, J.)

(SUNIL B. SHUKRE, J.)