

prior to 1980 and as far as back on 7th February 1994 the Deputy Collector had issued notice under Section 50 of the MLRC, 1966, calling upon the Petitioners to submit their relevant documents in respect of existence of their structures on the land belonging to Petitioner no. 1; Petitioner nos. 2 to 11 are carrying out Pooja and Seva of the Petitioner no. 1's, temple precincts and premises which is *prima facie* borne out from the documentary evidence placed on record. The names of the Petitioner nos. 2 to 11 are also reflected in the electoral roll issued by the Election Commissioner of India as far as back in 1994 which are appended to the petition. There is other documentary evidence i.e. documents showing existence of the Petitioners' structures which are the electricity bills and tax assessment receipts.

3. What is borne out from the record is the fact that in 2016 the Tahsildar, Borivali has submitted a report to the Collector, MSD, Mumbai for regularisation of the structures of the Petitioners standing on the land belonging to the Petitioner no. 1-Trust namely CTS No. 1095 (part) on the applications made by the Petitioners. The documentary evidence appended to the said application and submitted by the Petitioners date back to existence of their structures prior to 1982 and its so finds mentioned in the report submitted by the

Tahsildar to the Collector, seeking regularisation. Some of the structures are used by Petitioners as commercial premises for which the Municipal Corporation has issued shops and establishment licenses since long. The surveyor to the Deputy Collector who has passed the impugned order carried out a detailed survey and measurement of the structures for effecting regularisation in the year 2014 and has submitted a detail report along with panchnama and his findings dated 6th July 2014.

4. In the aforesaid background, for the first time after a hiatus of almost eight years after the survey was carried out and report was submitted for regularisation of the structures, the office of the Deputy Collector i.e. respondent no. 2 issued the impugned notices under Section 50 to the Petitioners and called upon them to once-again furnish evidence of existence of their structures. The land on which the structures are situated including the temple of Petitioner No. 1 has admittedly been declared as slum and one of the principal grievance advance by the Petitioner is that in view of the statutory notice issued under Section 3(z)(2) of the Maharashtra Slum Act, the impugned action under Section 50 invoked by the Deputy Collector is not maintainable. That apart it is also an admitted fact that insofar as the

larger portion of the plot of the Petitioners including the temple and structure is concerned, the State Government has allotted the same for a Slum Redevelopment Project. It is seen that many of the other structures in the vicinity are duly represented by the proposed Co-operative Housing Societies. *Prima facie*, it is seen that insofar as the Petitioners before me are concerned, their eligibility will otherwise be declared in terms of their documentary evidence for eligibility and in accordance with Government Resolution dated 16th May 2015 issued by the State of Maharashtra giving protection to such structures. Appended to the petition is a copy of order dated 4th June 2018 at 'Exhibit-S wherein the Additional Commissioner has after considering similar and identical facts has passed orders in terms of the structures of the Petitioners. Perusal of that order at page 103, *prima facie* shows that the Competent Authority has found that the structures belonging to the Petitioners have been in existence prior to 2000 and therefore they qualify as Protected Structures under Government Resolution dated 16th May 2015, save and except two structures which have been singled out in the said order by giving appropriate reasons.

5. In that view of the matter, it is needless to state that the eligibility of the Petitioners shall be governed under the Maharashtra

Slum Act and the impugned action invoking Section 50 under the Maharashtra Land Revenue Code, 1966 and calling upon the Petitioners to prove their eligibility on the basis of documents is therefore, in my opinion, arbitrary and un-called for. Insofar as the impugned action invoked by respondent nos. 2 and 3 are concerned, both the orders dated 05/07/2022 and dated 30/09/2024 passed by the Deputy Collector, Encroachment and Additional Commissioner, Konkan Bhavan are therefore not sustainable.

6. Needless to state that eligibility of all the Petitioners and their structures shall be considered by the concerned Competent Authorities in accordance with the applicable law and by following the due process of law.

7. In view of the above directions, the Petition stands allowed and disposed in terms of prayer clause (a).

(MILIND JADHAV, J)