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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7856 OF 2016

Javed Khaliq Khan ...Petitioner
vs.
Thane Municipal Corporation & Ors. ...Respondents

ALONG WITH
WRIT PETITION NO.4754 OF 2017

Jamal Ahmed Dawood Shaikh ...Petitioner
vs.
Thane Municipal Corporation & Ors. ...Respondents

ALONG WITH
WRIT PETITION NO.9242 OF 2016

Brijraj Raghupathi Kanojia ...Petitioner
vs.
Thane Municipal Corporation & Ors. ...Respondents

ALONG WITH
WRIT PETITION NO.7857 OF 2016

Aslam Abdula Agha ...Petitioner
vs.
Thane Municipal Corporation & Ors. ...Respondents

ALONG WITH
WRIT PETITION NO.7858 OF 2016

Mrs.Saikool Tafuzul Hussain Khan ...Petitioner
vs.
Thane Municipal Corporation & Ors. ...Respondents

ALONG WITH
WRIT PETITION NO.7860 OF 2016

Shaikh Asif Jan Mohammed ...Petitioner
 vs.
 Thane Municipal Corporation & Ors. ...Respondents

ALONG WITH
WRIT PETITION NO.7861 OF 2016

Inayatulla Kifayatulla Khan ...Petitioner
 vs.
 Thane Municipal Corporation & Ors. ...Respondents

ALONG WITH
WRIT PETITION NO.7863 OF 2016

Asir Salauddin Inamdar ...Petitioner
 vs.
 Thane Municipal Corporation & Ors. ...Respondents

ALONG WITH
WRIT PETITION NO.7864 OF 2016

Sadiqunnisa Aimal Khan ...Petitioner
 vs.
 Thane Municipal Corporation & Ors. ...Respondents

ALONG WITH
WRIT PETITION NO.9122 OF 2016

Hidayatulla Mohammad Hasan Khan ...Petitioner
 vs.
 Thane Municipal Corporation & Ors. ...Respondents

ALONG WITH
WRIT PETITION NO.6429 OF 2017

Anil Kumar Maurya ...Petitioner
 vs.
 Thane Municipal Corporation & Ors. ...Respondents

ALONG WITH

WRIT PETITION NO.6738 OF 2016

Smt.Shahnoor Shakil Hashmi ...Petitioner
vs.
Thane Municipal Corporation & Ors. ...Respondents

ALONG WITH
WRIT PETITION NO.6739 OF 2016

Smt.Naseema Begam Nasir Ahmed
Ansari and another ...Petitioners
vs.
Thane Municipal Corporation & Ors. ...Respondents

ALONG WITH
WRIT PETITION NO.9517 OF 2016

Al-Khair Cafeteria (Fast Food Shop)
through its Sole Prop. Mr.Mohammed
Arif Abbas Satware ...Petitioner
vs.
Thane Municipal Corporation & Ors. ...Respondents

ALONG WITH
WRIT PETITION NO.11345 OF 2016

Saifuddin Ismail Darugar ...Petitioner
vs.
Thane Municipal Corporation & Ors. ...Respondents

ALONG WITH
WRIT PETITION NO.6697 OF 2016

Mohd.Ashfaque Huzoor Ahmed Khan ...Petitioner
vs.
Thane Municipal Corporation & Ors. ...Respondents

ALONG WITH
WRIT PETITION NO.7460 OF 2016

Kamruddin Ibrahim Teli ...Petitioner
 vs.
 State of Maharashtra & Ors. ...Respondents

ALONG WITH
WRIT PETITION ST.NO.26330 OF 2016

Anis Munir Khan & Anr. ...Petitioners
 vs.
 Thane Municipal Corporation & Ors. ...Respondents

ALONG WITH
WRIT PETITION NO.9520 OF 2016

Yacoob Ali Kalu Miya Diwan ...Petitioner
 vs.
 Thane Municipal Corporation & Ors. ...Respondents

Mr.Rahul D. Motkar for the Petitioners in WP
 Nos.7856/2016, 4754/2017, 7857/2016, 7858/2016,
 7860/2016, 7861/2016, 7863/2016, 7864/2016,
 9122/2016
 Mr.Vishal Kanade for the petitioner in
 W.P.NO.9242/2016
 Mr.Mandar Limaye for the respondent Nos.1 and 2 in
 W.P.Nos.7856/2016, 7857/2016, 7858/2016, 7860/2016,
 7861/2016, 7863/2016,7864/2016 and for the
 respondent No.1 in W.P.No.9122/2016
 Mr.Rohit P. Sahadeo for the respondent Nos.1 and 2
 in W.P.No.4754/2017
 Mr.R.S.Apte, Senior Advocate i/b Mr.N.R.Bubna for
 the respondent No.1 in W.P.No.9242/2016
 Mr.S.A.Shaikh for the petitioner in
 W.P.No.11345/2016
 Mr.Atharva A. Dandekar for the petitioner in
 W.P.NO.6429/2017
 Ms Smruti Tulpule for the petitioners in
 W.P.Nos.6697/2016, WP/6738/2016, WP/6739/2016,
 WP/9517/2016, WP/9720/2016, WPST/26330/2016 and
 CP/95/2017
 Ms Ketki Gadkari for the petitioner in
 W.P.No.7460/2016
 Mr.Mandar Limaye for the respondent No.1 in WP

Nos.11345/2016, 6697/2016, 6738/2016, 6739/2016, 6739/2016, 7460/2016, 9517/2016, 9720/2016 and CP No.95/2017

Mr.R.S.Apte, Senior Advocate with Mr.N.R.Bubna for the respondent No.1 in WP No.6429/2017

Ms R.A.Salunkhe, AGP for State.

CORAM : A.S.OKA, & P.N.DESHMUKH, JJ.

DATE ON WHICH JUDGMENT IS RESERVED: APRIL 12,2018

DATE ON WHICH JUDGMENT IS PRONOUNCED:JUNE 21,2018

(Signed Judgment is pronounced by Shri A.S.Oka,J as per Rule 1(i) of Chapter XI of the Bombay High Court Appellate Side Rules,1960 in absence of Shri P.N.Deshmukh,J who is sitting at Nagpur)

JUDGMENT: (PER A.S.OKA,J.)

1 This group of petitions was finally heard by this Bench on 20th February 2018. After hearing the parties, the petitions were fixed on 26th February 2018 for dictation of Judgment. However, with effect from the same date, there was a change of assignment. Thereafter, as per the administrative order passed by the Hon'ble the Acting Chief Justice, these petitions have been ordered to be again placed before this Bench. Accordingly, the petitions were placed before this Bench on 12th April 2018. After hearing further submissions, the Judgment was reserved.

2 In this group of petitions, the challenge by the petitioners is to the action of demolition of their respective structures/shop premises by the Municipal Corporation of city of Thane (for short 'the said Corporation'). According to the case of

the petitioners, the action of demolition was taken without following any due process of law of whatsoever nature. The prayers which are pressed into service by the petitioners are essentially for direction to the said Corporation to re-construct the demolished structures. In some of the petitions, there is a prayer for seeking a writ of mandamus directing the said Corporation to pay compensation.

3 In Writ Petition No.7856 of 2016, the petitioner claimed to be in possession of a shop bearing more particularly described in paragraph 1 of the petition situated at Kausa, Thane. In the said petition, the case made out is that the said shop was in existence for more than 35 years. It is alleged that on 7th May 2016, the said shop was demolished illegally and highhandedly by the Officers of the said Corporation for road widening. There are various prayers made in this petition including a prayer for seeking a writ of mandamus against the said Corporation to rebuild the said shop. There is a prayer for grant of compensation. There is an affidavit in reply filed to the said petition by the said Corporation of Shri Shankar Patole, Assistant Municipal Commissioner in which he has stated that the said shop was affected by a Development Plan road (for short 'D.P.Road'). It is stated that the said shop was coming within a 40 meter wide D.P.Road and was demolished for the purpose of widening of the road. It is alleged that the shop was constructed without obtaining

development permission. Reliance is placed on the decision of the Apex Court in the case of Ramniklal N.Bhutta and another Vs State of Maharashtra and others¹ by contending that the public interest is in favour of widening of a very congested road which has to be weighed against the private interest of the petitioner. There is another affidavit filed on behalf of the Municipal Corporation of Shri Jhunjhar P. Pardeshi in which it is claimed that illegal extension of shop on the D.P.Road has been removed. It is reiterated that the petitioner could not produce a copy of permission granted for construction of the shop.

4 In Writ Petition No.4754 of 2017, a similar grievance is made in respect of a shop more particularly described in paragraph 1 of the petition. Here again allegation is that on 5th May 2016, the officers of the said Corporation demolished the said shop without following due process of law. There is no reply filed by the said Corporation to this petition.

5 In Writ Petition No.9242 of 2016, the petitioner claimed to be in possession of the two shops bearing shop No.E-1 and A-11 at Mumbra, Thane which are more particularly described in paragraph 1 of the petition. It is stated in the petition that the Shop No.E-1 was substantially damaged in the demolition drive carried on 4th, 5th and 6th of May

1 (1997) 1 SCC 134

2016 by the said Corporation and a substantial part of it was demolished. It is alleged that the second shop bearing No.A-11 was completely demolished. There are similar prayers in this petition in respect of the shops as in case of the shop premises subject matter of other petitions. There is a prayer made for protecting the shop No.E-1 from further demolition. The said Municipal Corporation has filed a reply of Shri Shankar Patole, the Assistant Commissioner. It is claimed in the reply that the shops were constructed by making encroachment on a public road. It is contended that in view of section 231 of the Maharashtra Municipal Corporations Act, 1949 (for short 'the said Act of 1949'), no notice is required to be served for removing encroachment on public road.

6 In Writ Petition No.7857 of 2016, the case of the petitioner is that he was the owner of the shop more particularly described in paragraph 1 of the petition which was illegally demolished by the said Corporation on 4th and 7th May 2016. We must note here that the said Corporation has adopted its affidavits in reply filed in Writ Petition No.7856 of 2016 in this writ petition.

7 In Writ Petition Nos.7858 of 2016, 7860 of 2016, 7861 of 2016, 7863 of 2016, 7864 of 2016 and 9122 of 2016, the allegations are similar to the allegations made in the Writ Petition No.7856 of 2016. The description of the shops which were

allegedly illegally demolished is in paragraph 1 of the said writ petitions. In these writ petitions, there is no reply filed by the said Corporation. However, at the time of oral submissions, reliance was placed by the said Corporation on affidavits filed in the Writ Petition No.7856 of 2016.

8 In Writ petition No.11345 of 2016, the petitioner has claimed that he was holding shop Nos.1 and 2 more particularly described in paragraph 1 of the petition. It is claimed that total area of the said two shops was 11' X 8' having height of 16'. It is stated that though there were two shops having two shutters on the outer side of the shops, for all purposes, the shops were treated as a one shop. It is alleged in the petition that the said Corporation demolished substantial portion of the said shops on 5th May 2016 and now only a portion having having width of 3 feet remains. The main prayer in this petition is for issuing a writ of mandamus against the said Corporation directing it to reconstruct the said shops. There is a reply filed by the said Corporation contending that the shops were illegally constructed and that the shops were on 10 meter wide D.P.Road.

9 In Writ Petition No.6697 of 2016, the case made out in the petition is that the petitioner was in possession of shop No.1A more particularly described in paragraph 1 of the petition. It is pointed out in the petition that on 22nd July 2018, the said

Corporation issued a notice under sub-section 1 of section 2 of section 260 of the said Act of 1949 and on 24th November 2009, an order of demolition was passed in respect of the said shops on the basis of the said notice. The petitioner filed a Special Civil Suit No.272 of 2010 in the Court of Civil Judge (S.D.), Thane seeking a declaration that the said notice and order were invalid and illegal. On 10th December 2010, the Civil Court decreed the suit by accepting the contention that the petitioner's structure was authorised and by holding that the impugned notice and order were illegal, invalid and bad in law. An appeal preferred against the said decree by the said Corporation before the District Court was dismissed. Even the Second Appeal preferred by the said Corporation against the aforesaid decrees was dismissed by the learned Single Judge of this Court by the order dated 1st February 2013. In the said order, the learned Single Judge recorded a statement on behalf of the said Corporation that it is willing to settle the dispute with the petitioner. The case made out in the petition is that after the aforesaid decision, there is no change made by the petitioner in the shop subject matter of the suit and the said shop was illegally demolished by the said Corporation on 5th May 2016. There is a prayer made in the petition directing the said Corporation to reconstruct the said shop No.1A. In the alternative, there is a prayer made to provide adequate monetary compensation. There is also an additional prayer

seeking a writ of mandamus against the said Corporation directing the said Corporation to pay the compensation to the petitioner on account of loss of livelihood caused due to illegal demolition of the said shop. Further prayer is for initiating disciplinary proceedings against the erring Municipal Officers under section 72-C of the said Act of 1949. There is a reply filed to the said petition by Shri Shankar Patole, Assistant Commissioner of the said Corporation. In the reply, it is stated that the said shop of the petitioner was affected by a D.P.Road and was demolished in road widening undertaken in the same area. There is a vague statement made in the affidavit that the Municipal Corporation was ready and willing to offer alternate premises in Ideal Market which is located in the same vicinity. By filing rejoinder, the Constituted Attorney of the petitioner produced a photo copy of the sanctioned plan which according to the petitioner shows the said shop.

10 In Writ Petition No.6429 of 2017, the case made out by the petitioner is that the petitioner was in possession of the premises more particularly described in paragraph 1 of the petition which was illegally and highhandedly demolished by the said Corporation on 6th May 2016. The petitioner has sought a writ of mandamus directing the said Corporation to reconstruct the demolished premises. A writ of mandamus is also sought directing to initiate disciplinary proceedings against the

Municipal Officers who are responsible for illegal demolition. There is no reply filed to this petition.

11 In Writ Petition No.6738 of 2016, the case of the petitioner is that he was in possession of a Shop more particularly described in paragraph 1 of the petition which was illegally demolished by the said Corporation. There are similar prayers made as in Writ Petition No.6429 of 2016. In addition, the petitioner has prayed for issuing a writ of mandamus directing the first respondent-Municipal Corporation to pay compensation to the petitioner for loss of livelihood due to illegal demolition of the shop. There is an affidavit in reply filed by Shri Shankar Patole, Assistant Commissioner in which it is contended that the shop was unauthorizedly constructed which was affected by a 30 meter wide D.P.Road. It is contended that the shop was demolished in road widening work. Moreover, it is contended that the said Municipal Corporation was willing to offer alternate accommodation in Ideal Market in the vicinity of the original shop.

12 In Writ Petition No.6739 of 2006, the case made out by the petitioners is that they were in possession of the Shop No.2 more particularly described in paragraph 1 of the petition. According to the case of the petitioners, on 21st July 2008, a notice under sub-sections 1 and 2 of section 260 of the said Act of 1949 was served to them in respect

of the said shop. After a reply was filed to the said notice, on 24th November 2009, the said Corporation passed an order of demolition which was challenged by the petitioners by filing Special Civil Suit No.942 of 2009 in the Court of Civil Judge (S.D.), Thane. The petitioners are relying upon the Judgment and Decree dated 28th September 2010 passed in the said suit by which the said notice and the said order were held to be illegal and the said Corporation was injuncted from acting upon the said notice and the said order. It is the case of the petitioners that the said Judgment has attained finality. The cause of action for filing the writ petition is the alleged illegal demolition of the said shop by the said Corporation on 5th May 2016. The first prayer in the petition is for seeking a writ of mandamus enjoining the said Corporation to reconstruct the said shop. The second prayer in the alternative is for directing the payment of compensation. The third prayer is for initiating disciplinary proceedings against the Municipal Officers responsible for illegal demolition. There is an affidavit in reply filed by the said Corporation of Shri Shankar Patole, Assistant Commissioner in which it is accepted that the Decree of the Civil Court has become final. However, it is contended that the shop was illegally constructed which was demolished as it was within 30 meter wide D.P.Road. It is stated that alternate accommodation has been offered to the petitioners in Ideal Market in the same locality.

13 In Writ Petition No.7460 of 2016, the case of the petitioner is that he was holding a shop No.1 more particularly described in paragraph 1 of the petition. In the petition, reliance is placed on Judgment and Decree dated 5th September 2012 passed by the learned 2nd Joint Civil Judge (J.D.) in R.C.S.NO.516 of 2008 by which earlier notice and order of demolition passed by the said Corporation in respect of the said shop were held to be illegal and the said Corporation was restrained from acting upon the said notice. It is contended that the said Decree has become final. The case made out in the petition is that the said shop premises was illegally demolished by the said Corporation on 5th May 2016. As in case of other petitions, there is a prayer made directing the said Corporation to reconstruct the said shop. There is a prayer in the alternative for grant of compensation. There is an affidavit in reply filed by Shri Shankar Patole, Assistant Commissioner on behalf of the said Municipal Corporation in which a stand taken is that the shop was affected by a D.P.Road and therefore, the shop was demolished. It is alleged that Gala No.55 was allotted to the petitioner by way of rehabilitation which the petitioner has not accepted. A rejoinder has been filed by the petitioner stating that even the shop number of the shop proposed to be allotted to the petitioner was not mentioned in the offer. It is specifically mentioned that the market in which the said shop

alternate was situated has not been transferred to the Municipal Corporation and that there is no Occupation Certificate granted in respect of the said market.

14 In Writ Petition No.9517 of 2016, it is claimed that the petitioner was in possession of shop premises more particularly described in paragraph 3A of the petition. It is contended that on 20th April 2016, the said Corporation issued a notice under sub-sections 1 and 2 of section 260 of the said Act of 1949 which was served to the petitioner on 3rd May 2016. It is alleged that in breach of the directions issued by this Court in the case of Sopan Maruti Thopte and another vs. Pune Municipal Corporation and another², the shop was demolished on 4th May 2016. There is a prayer made in this petition seeking a writ of mandamus directing the said Corporation to reconstruct the said shop. There is a prayer made in the alternative to grant compensation. There is also a prayer made to initiate disciplinary action against the Officers who are responsible for illegal demolition. There is an affidavit filed by Dr.Sunil Vasant More, the Designated Officer of the concerned ward on behalf of the said Corporation. In the affidavit, it is contended that on 30th April 2016, a show cause notice was issued to the petitioner by the said Corporation. It is contended that the structure was affected by the D.P.Road having width of 30 meters

2 1996 (1) Mh.L.J. 963

and therefore, the petitioners' structure was required to be demolished.

15 In Writ Petition No.9520 of 2016, the petitioner has stated that he was in possession of shop No.2 more particularly described in paragraph 1 of the petition. It is stated that on 30th April 2016, a show cause notice under section 260 of the said Act of 1949 was issued to the petitioner calling upon the petitioner to show cause as to why action of demolition should not be taken. It is alleged that on 4th May 2016, the shop was illegally demolished by the said Corporation. There are similar prayers made in this petition seeking a writ of mandamus directing the Municipal Corporation to reconstruct the shop premises. There is a prayer made in the alternative to pay adequate compensation. There is an additional prayer for directing the said Corporation to pay compensation on account of loss of livelihood due to demolition of shop premises. There is an affidavit in reply filed by Dr. Sunil Vasant More, Designated Officer on behalf of the said Corporation in which reliance is placed on the notice dated 30th April 2016. It is contended that as the shop was illegal and was affected by 30 meter wide D.P.Road, the same was demolished. There is a rejoinder filed stating that the petitioner was willing to accept the permanent alternate accommodation, if offered as per the Resolution No.66 dated 18th July 2014 passed by the General Body of the said Corporation.

16 In Writ Petition Stamp No.26330 of 2016, the petitioner claimed that they were in possession of Shop No.3 more particularly described in paragraph 1 of the petition which was illegally demolished on 4th May 2016 by the said Corporation without following due process of law. There are similar prayers made in this petition seeking direction for reconstruction of the demolished shop premises, for grant grant of monetary compensation etc. Even in this petition, there is an additional affidavit filed by the petitioner recording willingness to accept the alternate accommodation, if offered as per the Resolution No.66 dated 18th July 2014.

17 The learned counsel for the petitioners submitted that in all these cases, the structures of the petitioners have been illegally and highhandedly demolished without following due process of law and the petitioners have been deprived of their livelihood. The petitioners relied upon the Resolution No.66 of 18th July 2014 passed by the General Body of the said Municipal Corporation which provides for grant of alternate accommodation in lieu of illegal shop premises/structures demolished for road widening. He submitted that even assuming that the subject structures were unathorised, the petitioners are entitled to alternate accommodation as provided in the said Resolution. But, the said Corporation is not willing to offer accommodation as provided in the Resolution to any of the

Petitioners. Reliance was also placed on the Judgment and Order dated 31st July 2017 in Writ Petition No.6950 of 2016 passed by this Court in a similar case.

18 The learned senior counsel and the learned counsel representing the said Corporation did not dispute that due process of law as contemplated by the decision of this Court in the case of Sopan Maruti Thopate (supra) was not followed before demolishing the structures subject matter of these petitions. However, their contention is that the structures subject matter of these petitions were illegally and unauthorizedly constructed on a D.P.Road. Reliance was placed by them on the decision of the Apex Court in the case of Ramniklal (supra) by contending that public interest must give a way to private interest as public interest overrides the private interest. It was pointed out by the learned counsel counsel for the said Corporation that the Judgment and Order dated 1st July 2017 in Writ Petition No.6950 of 2016 has been stayed by the Apex Court by an interim order dated 6th November 2017 in a petition for Special Leave to Appeal No.28774 of 2017. However, they do not dispute that the said Judgment and order dated 31st July 2017 is in almost identical cases. The learned counsel on instructions stated that it is not possible for the said Corporation to allot tenements or premises as per the Resolution No.66 dated 18th July 2014 though the said Resolution is still in

force and may apply to the cases of the petitioners. Their contention is that adequate premises are not available.

19 In at least three writ petitions, the submissions have been made on the basis of a Decree passed by the Civil Court in which a finding has been recorded that the structures were lawful. It is contended that the findings have attained finality and after the said findings were rendered, there was no additional construction was carried out by the petitioners in relevant petitions.

20 We have carefully considered the submissions. There is no dispute between the parties that the shop premises/structures subject matter of these petitions were in existence and were demolished by the said Corporation. As far as the demolition of illegal structures is concerned, the law has been laid down by the Division Bench of this Court in the case of Sopan Maruti Thopate and others (supra). Paragraphs 19 to 21 of the said decision read thus:

"19. Hence, on the basis of the law as discussed above, it is directed that after 1st May, 1996 the Bombay Municipal Corporation or the Municipal Corporations constituted under the B.P.M.C. Act would follow the following procedure before taking action under Section 351 of the B.M.C. Act or under S.260 of the B.P.M.C. Act.

"(i) In every case where a notice under Section 351 of the B.M.C. Act/ under Sec. 260 of B.P.M.C. Act is

issued to a party 15 days' time shall be given for submitting the reply. In case the party to whom notice is issued sends the reply with the documents, and shows cause, the Municipal Commissioner or Deputy Municipal Commissioner shall consider the reply and if no sufficient cause is shown, give short reasons for not accepting the contention of the affected party.

(ii) It would be open to the Commissioner to demolish the offending structure 15 days after the order of the Commissioner/ Deputy Municipal Commissioner is communicated to the affected person.

(iii) In case the staff of the Corporation detects the building which is in the process of being constructed and/or reconstructed and/ or extended without valid permission from the Corporation, it would be open to the Commissioner to demolish the same by giving a short notice of 24 hours after drawing a panchanama at the site and also by taking photographs of such structure and/or extension. The photographs should indicate the date when the same were taken.

(iv) In case where the Municipal Corporation has followed due process of law and demolished the unauthorised structure and or extension, if the same is reconstructed without valid permission within a period of one year, it would also be open to the Corporation to demolish the same by giving a short notice of 24 hours.

(v) If the offending structure and/or extension which is assessed by the Corporation for two years, notice shall provide for 15 days' time to show cause. If the Deputy Municipal Commissioner comes to the conclusion that he requires assistance of the party, he may give an oral hearing if he deems fit and proper before passing the order. It is made clear that oral hearing is not at all compulsory but it is at the discretion of the authority.

(vi) In any other case the Corporation is directed to issue a show cause notice in case of any structure and/or extension other than those mentioned in clauses (i) to (iv) above. The Corporation shall provide for 7 days' time to show cause in such a case."

20. In case the notice is issued under Sec. 478 of the B.P.M.C. Act, 1949 and if the person has not complied with the requisitions of the Commissioner, then it would be open to the Commissioner to demolish the unauthorised structure after expiry of 30 days of the period specified in the notice for removal of such construction.

21. The Municipal Corporations in the State of Maharashtra would follow the above directions so

as to avoid unnecessary litigation.”

(emphasis added)

21 The said decision of the Division Bench of this Court has admittedly attained finality. It deals with section 260 of the said Act of 1949 as is clear from paragraph 19 of the said Judgment in which the said Act of 1949 is referred as B.P.M.C Act. It is an admitted position that in none of the cases in hand, the aforesaid directions issued by the Division Bench were followed. In few cases, where notices were issued on 26th/30th April 2016 under section 260 of the said Act of 1949, admittedly 15 days time was not granted to the petitioner to submit a reply to the notice. Admittedly, much before the completion of the period of 15 days from the date of service of notices, the structures were demolished.

22 A vague contention has been raised in some of the petitions by the said Corporation that in view of section 231 of the said Act of 1949, it was not necessary to serve a notice to the petitioners. We must note here that it is not the case of the said Corporation that principles of natural justice have been followed before taking action of demolition. These issues were considered by the Division Bench of this Court of which one of us (A.S.Oka,J.) was a party by the aforesaid Judgment dated 31st July 2015. Paragraphs 7 to 10 of the said decision read thus:

“7. The law on the aspect is no more res integra starting from the decision of the Apex Court in the case of Olga Tellis and others v. Bombay Municipal Corporation and others. **The Apex Court held that before taking action of removal of encroachment on the streets or footpaths, the rule of audi alteram partem has to be complied with.**

8. In the present case, admittedly, no opportunity whatsoever of being heard was granted to the Petitioner in any form before taking action of demolition and no notice was served to the Petitioner before taking action of demolition.

9. **In the affidavit in reply, reliance is placed on Section 231 of the said Act by contending that it was not necessary to issue any notice for removing encroachments on the public road. Section 231 of the said Act reads thus:**

231. The Commissioner may, without notice, remove anything erected, deposited or hawked or exposed for sale in contravention of Act. The Commissioner may, without notice, cause to be removed,—

(a) any wall, fence, rail, post, step, booth or other structure whether fixed or movable and whether of a permanent or a temporary nature, or any fixture which shall be created or set up in or upon or over any street or upon or over any open channel, drain, well or tank contrary to the provisions of this Act after the appointed day ;

(b) any stall, chair, bench, box, ladder, bale, board or shelf, or any other thing whatever placed, deposited, projected, attached or suspended in, upon from or to any place in contravention of this Act ;

(c) any article whatsoever hawked or exposed for sale in a public place or in any public street in contravention of the provisions of this Act and any vehicle, package, box or any other

thing in or on which such article is placed. ”

10. It is contended that as the shop structure was on the road, Section 231 of the said Act will apply. **Along with the affidavit in reply, no material whatsoever has been placed on record by the first Respondent showing that the shop structure subject matter of this Petition was constructed on a public street, open channel, drain, tank or well. Hence, Section 231 of the said Act has no application.”**

23 Even in these cases there are no facts pleaded or brought on record by the said Corporation which show that section 231 was attracted. As regards the Resolution No.66 dated 18th July 2014 passed by the General Body of the said Municipal Corporation, it is not in dispute that the said Resolution is in force as of today and that the same applies to the facts of all these petitions. However, the stand of the said Corporation is that the Municipal Corporation is not in a position to allot tenements as provided in the said Resolution. In two cases, the stand of the said Corporation is that it is willing to allot premises in Ideal Market. However, no document is placed on record to show that the said market vests in the said Corporation and there is an Occupation Certificate granted to occupy the said market.

24 Thus, the scenario which emerges is that the shop premises subject matter of these petitions wherein the respective petitioners were carrying on their business and earning livelihood have been demolished without following a semblance of due

process of law and also in breach of the binding directions issued by this Court in the case of Sopan Maruti Thopate (supra). The said Municipal Corporation is not willing to abide by its own Resolution No.66 which provides for rehabilitation of occupants of the structures demolished for road widening by allotting permanent premises of the sizes mentioned therein. Though the said Resolution is in force, it is not being implemented. Moreover, there is no specific offer made by the said Corporation for grant of monetary compensation to the petitioners. Even assuming that the structures were on the land shown as D.P.Road in the Development Plan sanctioned under the Maharashtra Regional and Town Planning Act,1966, due process of law contemplated by the said Act of 1966 has not been followed. Therefore, we have no option but to permit the the petitioners to reconstruct the premises subject matter of these petitions at their cost subject to right of the said Corporation to initiate action of demolition in accordance with law. We make it clear that permission for reconstruction of the demolished structures will not confer any right on the petitioners and therefore, it will be always open for the Municipal Corporation to initiate action of demolition in respect of the reconstructed premises after following due process of law as laid down by this Court in the case of Sopan Maruti Thopate (supra). We make it clear that if any of reconstructed structures are demolished, the said Municipal Corporation will be bound by the

Resolution No.66 of 2014 so long as the same is not modified/rescinded or stayed.

25 In some of the petitions, the petitioners have relied upon the Judgments and Decrees passed by the Civil Court by which notices and orders of demolition passed under section 260 of the said Act of 1949 in respect of some of the structures were held to be illegal and the said Corporation was restrained from acting upon the said notices and orders. There are observations made in the Judgment of the Trial Court that the said Municipal Corporation could not produce any material on record to contest the contention raised by the plaintiffs that the structures subject matter of the notices and orders were authorised. However, there are no specific findings recorded by the Civil Court that the Planning Authority constituted under the said Act of 1966 granted development permission to construct the structures. In one case, reliance is placed only on NOC issued by a Village Panchayat which is not a development permission. Therefore, the cases of those petitioners, where there are Decrees of Civil Court, their cases will not stand on a higher pedestal than other cases.

26 We have noted that the Judgment and Order dated 31st July 2017 passed by this Court in Writ Petition No.6950 of 2016 has been stayed under ad-interim order dated 6th November 2017 passed by the Apex Court. However, the law is very well settled. So

long as the binding decision of this Court is not set aside, notwithstanding the stay granted by the Higher Court, this Court continues to remain bound by the decision of its co-ordinate Bench. As there is no dispute that the cases of the present petitioners are on par with the case of the petitioners in Writ Petition No.6950 of 2016, we will have to grant a similar relief to the petitioners herein.

27 In some of the cases, according to the case of the petitioners, some part of the structures/shop premises was not demolished. We, therefore, make it clear that we are granting permission to the petitioners to re-erect their structures of the same size which were in existence on the date of demolition and that also by using the similar construction material.

28 Before we part with this Judgment, it will be necessary to deal with the contention of the said Corporation based on the decision of the Apex Court in the case of Ramniklal N. Bhutta and another(supra). We have carefully perused the said decision. A Writ petition was filed by the petitioners before this Court. The lands bearing C.T.S.NO.211 and 218 were notified for acquisition in the year 1979 under section 4 of the Land Acquisition Act, 1894 (for short 'the said Act of 1894'). On 18th September 1986, an Award was made by the Land Acquisition Officer under section 11 of the

said Act of 1894. While making the Award, the land bearing C.T.S.No.218 was excluded from the acquisition and the Award was made only in respect of the land bearing C.T.S.No.211. A writ petition was filed by the petitioners challenging acquisition of the land bearing CTS No.211. The writ petition was summarily dismissed by the learned Single Judge. A Letters Patent Appeal was preferred before a Division Bench for challenging the decision of the learned Single Judge. The Letters Patent Appeal was allowed and the Writ Petition was restored to the file. When the Writ Petition came up before the Division Bench of this Court, the Advocate for the Petitioners time. The prayer for grant of adjournment was rejected. The Division Bench dismissed the Writ Petition. An application for review was made by the petitioners therein before this Court. While dealing with the Review Petition, a Division Bench of this Court heard the Writ Petition on merits and dismissed the same. It was this order which was challenged before the Apex Court. The challenge to the acquisition was rejected by the Apex Court on the ground of delay and laches on the part of the appellants. Even on merits, the Apex Court found that the appellants had no case. After dismissing the appeal preferred by the appellants, the Apex Court, in paragraph 10 made following observations:

"10 Before parting with this case, we think it necessary to make a few observations

relevant to land acquisition proceedings. Our country is now launched upon an ambitious programme of all-round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with China economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as "Asian tigers", e.g South Korea, Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernization. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenges are generally in the shape of writ petitions filed in High Court. Invariably, stay of acquisition is asked for in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power of granting

stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and public interest coalesce. They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 – indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while

dealing with challenges to acquisition proceedings.”

29 After having carefully perused the paragraph 10, we find that the Apex Court was dealing with the case filed for challenging acquisition for public purposes. The observation of the Apex Court is that the High Courts have to weigh the public interest vis-a-vis the private interest while exercising the powers under Article 226 which are the discretionary powers.

30 In the present case, there is no challenge to the acquisition proceedings. In fact, there are no acquisition proceedings. The challenge in all these petitions under Article 226 is to the action of illegal demolition of the structures of the petitioners in which they were carrying on business for running their livelihood. From the assertions made in the petitions which are not disputed, it appears that the petitioners are small time traders who were earning their livelihood by conducting business in the said structures. Admittedly, the structures have been demolished without following due process of law. The said Municipal Corporation has expressed inability to rehabilitate the petitioners in terms of its own Resolution dated 18th July 2014, though the petitioners are admittedly entitled to rehabilitation in terms of the said resolution. Therefore, the decision of the Apex Court will have no application in the present cases.

31 As regards the claim for compensation in terms of money, it will be open for the petitioners to make a representation to the Municipal Corporation which shall be decided in accordance with law.

31 Hence, we pass the following order:

(I) It will be open for the petitioners to reconstruct their respective demolished structures which are subject matter of these petitions at their cost;

(II) While carrying out reconstruction, the petitioners shall ensure that the area of the reconstructed structures will be same as the area of the respective structures on the date of its demolition. The construction material of the same type shall be used for reconstruction;

(III) Before commencement of the work of reconstruction, the petitioners shall serve a notice in writing to the Designated Officer of the concerned ward. The notice shall be advance notice of seven days mentioning the time at which the work of reconstruction shall commence. It will be open for the Designated Officer or any other Officer nominated by him to remain present at the time of reconstruction;

(IV) We make it clear that even if the

shops/structures subject matter of these petitions are reconstructed, the same will not confer any legality on the structures. If the original shops/structures were constructed without obtaining development permission, after reconstruction of the said shops/structures, it will be open for the said Municipal Corporation to take action of demolition of the reconstructed shops/structures. However, action of demolition shall not be initiated without complying with the directions issued by this Court in the case of Sopan Maruti Thopate (supra);

(V) We make it clear that the said Corporation shall be bound by its General Body Resolution No.66 dated 18th July 2014, so long as it is not modified, rescinded or cancelled in accordance with law;

(VI) It will be open for the petitioners to make a representation to the said Corporation for seeking compensation by providing all the details. Such representations, if made, shall be decided by the said Corporation. The decision taken thereon shall be communicated to the concerned petitioners within two months from the date of the representation. No adjudication is made on merits of the claim for compensation;

(VII) Rule is made partly absolute on above terms with no order as to costs;

(VIII) We direct that the Order to reconstruction

shall not be implemented for a period of one month from the date on which this Judgment is uploaded;

(IX) All concerned to act upon an authenticated copy of this Judgment and order.

(P.N.DESHMUKH, J.)

(A.S.OKA, J.)

