

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

WRIT PETITION NO.1557 OF 2012
ALONG WITH
WRIT PETITION (L) NO.8 OF 2016

WP NO.1557 OF 2012

Sushila Co-operative Housing Society Ltd. .. Petitioner

Vs

The Municipal Corporation of Greater Mumbai
and Others. .. Respondents

—

Shri Jaydeep Raut i/b Shri Sunil N. Nair for the Petitioner.

Mrs. Shobha Ajitkumar for the Respondent Nos.1 and 2 BMC.

Shri Anjal Amin i/b M/s B. Amin & Co for the Respondent Nos.3(i) to
3(iii).

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WP (L) NO. 8 OF 2016

Bharti Vijay Shah. .. Petitioner

Vs

The Municipal Corporation of Greater Bombay
and Others. .. Respondents

—

Shri Anjal Amin i/b M/s B. Amin & Co for the Petitioner.

Mrs. Shobha Ajitkumar for the Respondent Nos.1 and 2.

Shri Jaydeep Raut i/b Shri Sunil N. Nair for the Respondent No.3.

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CORAM : A.S. OKA & C.V. BHADANG, JJ
DATED : 8TH FEBRUARY 2016

PC.

1. Heard the learned counsel appearing for the Petitioner in
Writ Petition No.1557 of 2012. We have heard the learned counsel

representing the legal representatives of the third Respondent in the said Writ Petition. One of the legal representatives viz. the Respondent No.3 has filed Writ Petition Lodging No.8 of 2016.

2. The prayer made in the Writ Petition No.1557 of 2012 is for implementation of the stop work notice issued by the Mumbai Municipal Corporation under Section 354A of the Mumbai Municipal Corporation Act, 1888 (for short “the MMC Act”) and for implementation of the order made thereon on 23rd February 2011.

3. There is a reply filed by Shri Dharmendra D. Kantharia, Assistant Engineer (B&F) of the Municipal Corporation dated 14th January 2016. In the affidavit, it is contended that the subsequent notice dated 6th July 2013 was served to the third Respondent under Sub-section (1) of Section 53 of the Maharashtra Regional and Town Planning Act, 1966 (for short “the MRTP Act”). A copy of the said notice has been annexed to the said affidavit. It was claimed that the work of demolition in terms of the said notice has been carried out.

4. In terms of the earlier order of this Court, Shri Ajoy Mehta, the Municipal Commissioner has filed the affidavit. Paragraph 2 of the said affidavit filed by Shri Mehta reads thus:

“2. I say that it is brought to my notice, the concern shown by the Hon'ble High Court for non filing the Affidavits in time or officers not briefing the Assistant Law Officers, which results in inconvenience caused to the Hon'ble Court. I say that I am issuing instructions to the Law department and Ward offices to ensure that Affidavits in Replies/pleadings on behalf of the MCGM are filed in this Hon'ble Court in time and cases be defended efficiently with utmost care.”

5. There is another affidavit dated 27th January 2016 filed by Shri Dharmendra D. Kantharia, Assistant Engineer (B&F). In the said affidavit, it is contended that further demolition work was carried out in terms of the aforesaid notice issued under Sub-section (1) of Section 53 of the MRTP Act. The Chairman of the Petitioner has contended that certain portion of the offending structure has not been demolished.

6. The Writ Petition (L) No.8 of 2016 is filed by one of the legal representatives of the third Respondent in Writ Petition No.1557 of 2012 wherein the challenge is to the same notice dated 6th July 2013 issued under Sub-section (1) of Section 53 of the MRTP Act.

7. The submission of the learned counsel appearing for the Petitioner in the Writ Petition No.1557 of 2012 is that the entire offending structures set out in the notice dated 6th July 2013 have not been demolished. The submission of the learned counsel appearing for the Petitioner in Writ Petition (L)No.8 of 2016 is that the Petitioner in the Writ Petition No.1557 of 2012 has no locus to complain about the

illegal construction. Though he states on instructions that the unauthorized construction subject matter of notice dated 6th July 2013 has been removed, the Petitioner in the said Writ Petition (L) No.8 of 2016 can always apply for regularization.

8. We have perused the Writ Petition (L) No.8 of 2016. On 29th July 2013, the Petitioner therein made an Application for regularization through an Architect. By a communication dated 19th August 2013, the Architect was informed by the Municipal Corporation that the Application cannot be entertained. Thereafter, no steps have been taken by the Petitioner. The present Petition has been filed on 5th January 2016. The very fact that the Writ Petitioner in the said Writ Petition or her predecessor applied for regularization shows that the Writ Petitioner and/or her predecessor accepted the correctness of the notice dated 6th July 2013. Therefore, no interference can be made in the said Writ Petition.

9. As far as Writ Petition No.1557 of 2012 is concerned, we have perused the additional affidavit dated 27th January 2016 filed by Shri Dharmendra D. Kantharia, the Assistant Engineer (B&F) of the Municipal Corporation. The photographs annexed to the said affidavit show that the substantial work of demolition has been carried out. If the Petitioner in the said Writ Petition has a grievance that the entire

unauthorized development set out in the notice dated 6th July 2013 has not been removed, it is for the Petitioner to make a representation to the concerned officer of the Municipal Corporation in that behalf. The Writ Petition need not be kept pending in view of the substantial compliance made by the Municipal Corporation.

10. Hence, we pass the following order:

ORDER :

- (a) Writ Petition (L) No.8 of 2016 is rejected;
- (b) It will be open for the Petitioner in Writ Petition No.1557 of 2012 to point out to the concerned designated officer of the Municipal Corporation that the entire part of the unauthorized development subject matter of the notice dated 6th July 2013 has not been removed. The contentions of all the contesting parties on this aspect are expressly kept open;
- (c) Writ Petition No.1557 of 2012 is accordingly disposed of;
- (d) There will be no orders as to costs.