

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2840 OF 2013**

Zahid A. Razzak and anr. .. Petitioners

V/s.

The State of Maharashtra and anr. .. Respondents.

Mr. K.D. Jha for the Petitioners.

Ms Geeta Shastri, Addl.GP a/w. Ms Uma Palsule – Desai, AGP for the State-Respondent No.1.

Ms Shobha Ajitkumar for Corporation-Respondent No.2.

**CORAM: DR. MANJULA CHELLUR, C.J.
AND M.S.SONAK, J.**

DATE : 25 OCTOBER 2016.

P.C.

1] The petitioners before this Court are seeking the following reliefs:

“(a) That it be declared by this Hon'ble Court that Section 55 of the MRTP Act, ultra vires the fundamental rights guaranteed under the Constitution of India and the same be struck down by this Hon'ble Court;

(b) that this Hon'ble Court be pleased to issue Notice to the Advocate General, State of Maharashtra to have his Say in respect of the validity of Section 55 of MRTP Act;

(c) that this Hon'ble Court be pleased to issue Writ of Certiorari and/or any other writ in the nature of certiorari or direction quashing and/or setting aside the subject notice bearing No.A/Bldg./BF II / 1161/M.R.T.P. 55/B & F/2013 dated 18.7.2013 issued under Section 55 of the MRTP Act, and the Order bearing No. Asstt. C/A/1161/ Bldg & Fact. dt. 19/08/2013, in respect of the notice structure situated over the terrace of M/s. Hotel Supreme, 4, Pandey Road, Cuffe Parade, Colaba, Mumbai-400 005.

(d) That pending the hearing and final disposal of the Writ

Petition that this Hon'ble Court may be pleased to pass an order and injunction restraining Respondents, more particularly Respondent No.2 their agents, servants and/or any other person or persons claiming through or under them from executing and/or enforcing and/or implementing and/or taking any further steps in pursuance of the said impugned notice bearing No.A/Bldg./BF II / 1161/M.R.T.P. 55/B & F/2013 dated 18.7.2013 issued under Section 55 of the MRTP Act, and the Order bearing No. Asstt. C/A/1161/ Bldg & Fact. dt. 19/08/2013, in respect of the notice structure situated over the terrace of M/s. Hotel Supreme, 4, Pandey Road, Cuffe Parade, Colaba, Mumbai-400 005.

(e) That this Hon'ble Court may be pleased to remand the above matter to the concern authorities of the Respondent No.2 for fresh hearing and for passing fresh reasoned orders by the concern authorities of the Respondent No.2 after considering fresh representation made Petitioner's Advocates with documents and to communicate the same in writing to the Petitioner and meanwhile execution of the abovesaid notice bearing No.A/Bldg./BF II / 1161/M.R.T.P. 55/B & F/2013 dated 18.7.2013 issued under Section 55 of the MRTP Act, and the Order bearing No. Asstt. C/A/1161/ Bldg & Fact. dt. 19/08/2013 passed by Assistant Engineer, 'A' Ward, be stayed.

(f) That interim and ad-interim reliefs in terms of prayer clause (d) and (e) above be granted in favour of the Petitioner abovenamed;

(g) For Cost; and

(h) Such other and further reliefs as the nature and circumstances of the case may require.”

2] According to learned counsel for the petitioners the alleged unauthorised construction is in existence from 2004 onwards and now the respondent authorities have served an order in terms of Section 55 of the Maharashtra Regional and Town Planning Act, 1966 (for short referred to as 'MRTP Act') to remove the alleged

unauthorised construction put up by the petitioners. According to him, Section 55 of the MRTP Act deserves to be struck down for the reasons mentioned in the writ petition especially with reference to paragraph 36. According to him, since the reading of Section 55 indicates that there is no opportunity of hearing to have a say in the matter, the very provision deserves to be struck down.

3] Section 55 of the MRTP Act reads thus:

“55. Removal or discontinuance of unauthorised temporary development summarily:- (1) Notwithstanding anything hereinbefore contained in this Chapter, where any person has carried out any development of a temporary nature unauthorisedly as indicated in sub-section (1) of section 52, the Planning Authority may by an order in writing direct that person to remove any structure or work erected, or discontinue the use of land made, unauthorisedly as aforesaid, within fifteen days of the receipt of the order; and if thereafter, the person does not comply with the order within the said period, the Planning Authority may request the District Magistrate or the Commissioner of Police, as the case may be, [or authorise any of its officers or servants,] to have such work summarily removed or such use summarily discontinued without any notice as directed in the order; and any development unauthorisedly made again, shall be similarly removed or discontinued summarily without making any order as aforesaid.

(2) The decision of the Planning Authority on the question of what is development of a temporary nature shall be final.”

4] We are afraid that the request of the petitioners cannot be appreciated since this Court has already on earlier occasion in ***Fehmida Abubakar Varakaya v. The State of Maharashtra and***

ors. ¹, opined that either reading of Section 55 of the MRTP Act in isolation or in conjunction with other provision, there is nothing which persuade the Court that the provision is *ultra vires* since 15 days period granted to the person to whom the notice is served can always approach the Competent Court (Planning Authority) and establish that the said construction is authorised. On securing copy of the order dated 4 September 2008 in *Fehmida Abubakar Varakaya (supra)*, we notice that the very counsel appearing for the petitioners in this case did challenge the provisions of Section 55 of the MRTP Act and was unsuccessful.

5] The gist of the notice impugned indicates that the construction directed to be demolished was put up by the petitioners in violation of the bye-laws since no permission from any statutory authorities required to be taken, was taken, therefore, there was direction to remove the unauthorised construction within 15 days, otherwise the matter would be referred to District Magistrate in terms of Section 55 of the MRTP Act for complying with the procedure contemplated. The very fact that 15 days' time granted would indicate that the authorities through their officials, have not gone to demolish without putting the writ petitioners of any caution of notice. On the other hand, 15 days' time is granted to allow the petitioners to approach the Competent Authority (Planning Authority) to establish that the alleged construction is very much within the provisions of the MRTP Act and cannot be held as unauthorised or there was no

¹ Writ Petition No. 51 of 2008 decided on 4th September 2008

need to take any permission to put up such construction.

6] Under these circumstances, we are of the opinion that the challenge to Section 55 of the MRTP Act fails and further the petitioners are at liberty to establish before the concerned authorities that the construction in-question is not an authorised construction, since they have obtained necessary permission or it is within the sanctioned plan of Hotel Building. Accordingly, the writ petition is disposed of.

(CHIEF JUSTICE)

(M.S.SONAK, J.)