

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO. 69 OF 2016

Mohammed Yunus Khan	}	Petitioner
versus		
The Municipal Corporation	}	
OF Greater Mumbai and Ors.	}	Respondents

None for the petitioner.

Mr. S. S. Pakale with Mr. Vinod Mahadik
for the Municipal Corporation.

Mr. P. P. Kakade-AGP for State.

**CORAM :- DR. MANJULA CHELLUR, C.J. &
N.M.JAMDAR, J.**

DATE :- JULY 13, 2017

P.C. :-

1. An affidavit indicating the course of action taken by the Municipal Corporation is placed on record. The petitioner and his counsel are absent. On submission of the learned counsel appearing for respondent no. 1, on verification of the order-sheets, it is noticed that the petitioner is absent and unrepresented on several previous occasions. On perusal of the writ petition, it is apparent that the complaint is not only about construction in the No-Development Zone, but also using of sub-standard quality material for construction of some schools, etc. at various places referred to in the petition.

2. A detailed report, by way of an affidavit, is placed on record by the Municipal Corporation. According to the affidavit, a competent officer, who was specially assigned to look into the matter, visited each of the sites complained of and further course of action is initiated item-wise, as stated in para 5 of the affidavit. Para 5 of the affidavit in reply reads as under:-

“5. The steps taken by the Respondents are as follows:

(A) Rajaram Sheth Vidyalay School at Bhandup:-

As far as complaint against structure of school building i.e. Rajaram Sheth Vidhyalaya at Trimurti Nagar, Shreeram Pada, Tulshetpada road Bhandup (W) 78 is concerned, this office issued notice under section 488 of MMC Act under No. S/DOS-104/396 dtd. 07.12.2016 for inspection of the school building i.e. Rajaram Sheth Vidhyalaya. However as per the copies of documents produced by the trustee of the said School, it is observed that the school building i.e. Rajaram Sheth Vidhyalaya Structure is in declared slum gazette and the trustees of the subject school have submitted the copy of the letter issued by Dy. Collector (Encroachment & Removal Kurla-1 and Competent Authority under no. उपजि/अति/कुर्ला-१/वशि/364-97 dtd. 10.11.1997. As mentioned in the said letter, as per the Notification no. एसएलएम/आयएमपी/सीए-वन/45 dtd. 03.10.1979, the part of land whereupon the structure of the school is under reference is situated is a “Declared Slum” and as per the Maharashtra Slum (Improvement, removal and Development) Act, 1971, the responsibility of Removal of Encroachment in the “Declared Slum” on any land irrespective of ownership of land (except the land belongs to Central Govt.) is lies with the respective Dy. Collector/Additional Collector (Encroachment & Removal). Therefore this office vide letter no.ACS/OD/180/AEBF dtd. 31.05.2017 and vide reminder under no. ACS/OD/189/AEBF dtd. 17.06.2017 informed to Dy. Collector (E & R.) Kurla-1 and Competent Authority to verify and initiate the necessary action at their end and inform this office. I

crave leave to and rely upon the said correspondence when produced.

It is also informed to the Dy. Collector (E. & R.) Kurla-1 vide the said letter dated 31.05.2017 and reminder dtd. 17.06.2017 that the State Govt. is one of the Respondent in the subject P.I.L., therefore, their say is also to be submitted before the Hon'ble High Court at the time of next date of the hearing of the said P.I.L. However no any communication has been received by this office from Dy. Collector (E. & R.) Kurla-1 till date.

The copies of the relevant notifications/Gazettes of state Govt. regarding taking the action by Dy.Collector/Additional Collector in the "Declared Slums" hereto annexed and marked **Exhibit "A"** the copy of the said Gazette Notification.

(B) R. K. D.Ed. & B.Ed. College, Ram Nagar, Rawate Compound, Bhandup (W), Mumbai-400 078:-

(i) On receipt of complaint dtd. 17.12.2008 from Mr. Sambhaji S. Kashid for unauthorized construction of R. K. D.Ed. & B.Ed. College situated at Ram Nagar, Rawate Compound, Bhandup (W), Mumbai-400 078. On receipt of the complaint, the site under reference was inspected by this office staff on 20.12.2008, when it was found that the College authority was carrying out unauthorized construction of 1st floor by constructing R.C.C. Column and B. M. Wall. Therefore a notice under section 354-A of MMC Act was immediately issued to the said unauthorized construction of B. M. wall and concrete work at Bhandari Samaj Land, Ram Nagar Rawate Compound, Bhandup (W), Mumbai - 400 078 under no. S/BF/106/19946/2008-09 dtd. 20.12.2008. In reply to the said notice, the party has submitted the reply stating therein that he is carrying out only plaster work and renovation of staircase etc.

(ii) As the noticee failed to produce the permission and or Authorization of the notice structure which was in progress at site, this office has arranged the demolition of the unauthorized work on dtd. 07.01.2009 and letter to that effect was forwarded to Bhandup Police station under no. ACS/PS/1/AEBF dtd. 02.01.2009 for providing necessary help for removal of unauthorized construction. Bhandup Police Station was not able to provide necessary help due to their

preoccupied commitment to some other places, as per their letter issued under no. 433/2009 dtd. 14.01.2009. I crave leave to refer to and rely upon the said notice issued u/s 354A of the MMC Act.

(iii) Then the demolition was again arranged on dtd. 17.01.2009 and police memo was forwarded to Bhandup Police Station under no. ACS/OD/PS/S/AEBF dtd. 14.01.2009. The demolition once again could not be taken place.

(iv) Thereafter, this office once again initiated notice action under section 53(1) of MRTP Act under no.ACS/OD/37 dtd. 12.05.2009 against shri. Ramesh Khanvilkar for unauthorized extension of existing college building comprising Ground+one upper floor with concrete slab and A. C. Sheet roof. In this regard, a letter dtd. 16.01.2009 was received from the office of Desk officer, Govt. of Maharashtra stating therein that the MCGM is requested to submit the self-explanatory detailed report of the expected action and a letter dtd. 28.05.2009 was also received to this office to remain present for hearing kept on 17.06.2009. Accordingly the report was submitted to the office of Addl. Desk Officer Urban Development, Govt. of Maharashtra vide no. ACS/10827/AEBF dtd. 01.12.2009.

(v) Simultaneously, the complainant, Shri. Sambhaji Kashid has filed PIL no. 35 of 2009. In the said PIL, directions were passed by the Hon'ble High Court that the action should be taken by following D.P.L. And the said P.I.L. Was came to be disposed of by an order dated 18.06.2009.

(vi) This office has requested the Urban Development department, Govt. of Maharashtra to furnish the copies of minutes of meetings/remarks vide letter dtd. 29.03.2011 & 26.07.2011. However the order is still awaited and no further information or order has yet been received from Urban Development department, Govt. of Maharashtra in this respect.

(vii) Meantime, this office has lodged the necessary complaint in the local Police station i.e. Bhandup Police Station against the accused, Shri.Ramesh Khanvilkar, the necessary procedure

of FIR & Panchanama has also been done by the Bhandup Police Station. This office has again requested the Urban Development department to give the Order if any/ copy of minutes of meeting so as to enable this office to take further necessary action in the matter vide letters dtd. 20.12.2011, 30.12.2011, 05.08.2013, 31.01.2014, 16.09.2014, 31.01.2015 & 22.06.2016. However till date no reply is received.

(viii) As the noticee Shri. Ramesh Khanvilkar has not complied the notice requisition, as per the orders from the Asstt. Commissioner 'S' Ward necessary complaints under section 53(1) of MRTP Act were filed by then J. E. (B. & F.) Smt. S. S. Rokade with the Bhandup Police Station on 26.02.2011 against the noticee Shri. Ramesh Khanvilkar to take cognizance of the aforesaid offence for unauthorized construction of R. K. D.Ed. & B.Ed. College pursuant to the notice under section 53(1) of MRTP Act dtd. 12.05.2009 issued by this Office.

(ix) Pursuant to the said complaint dtd. 26.02.2011, as per intimation from the Bhandup Police Station, this office concerned staff has attended the police station on 14.09.2011 when the concerned police staff also attended the site of R. K. D.Ed. & B.Ed. College and after panchanama etc. filed the FIR against the accused to deal with as per section 53(7) of MRTP Act. Thereafter the Senior Inspector of Police, Bhandup Police Station vide his letter dtd. 27.08.2013, has informed this office that as the complaint filed against above stated accused, it is necessary to file an offence sheet against him and therefore requested to give sanction.

(x) As per the said request letter from Senior Inspector of Police, Bhandup Police Station, the then Designated Officer - I, A. E. (B. & F.) 'S' Ward has vide letter bearing no. ACS/38297/AEBF dtd. 24.03.2015, exercising the powers and functions of the planning authority under section 142 of MRTP Act accorded the sanction to prosecute Shri. Ramesh Khanvilkar for committing an offence under section

53(1)/53(7) of MRTP Act by taking cognizance in the competent court.

(xi) In the meantime, the complainant Shri. Mohammed Yunus Khan has filed the instant PIL/69 of 2016 on 30.09.2015 for taking action on school and college building under reference.

(xii) Further, this office sought remarks from Building Proposal Department regarding any proposal for regularization submitted by Sanchalak/Director of Siddhivinayak Shikshan Prasarak Mandal R. K. D.Ed. & B. Ed. College, at Bhandari Samaj Land, Ram Nagar, Ravate Compound, above Pipe Line, Ramabai Nagar, Bhandup (W) vide letter no. ACS/OD/666/AEBF dtd. 30.11.2016. In reply to this letter the Ex.Engg. Building Proposal (ES) under no. Dy.Ch.E/B. P/12758/E.S. Dtd. 30.11.2016 stated that their office did not receive such proposal.

(xiii) Thereafter, this office vide letter bearing no. ACS/OD/687/AEBF dtd. 02.12.2016, informed to the Director, R. K. D.Ed. & B. Ed. College, requested to inform this office within 07 days to provide/all details regarding submission of their proposal if any of regularization of notice structure under notice no. 354-A of MMC Act Bearing no. S/BF/19946/08-09 dtd. 20.12.2008 and notice issued under section 53 (1) of MRTP Act bearing no. ACS/OD/37 dtd. 14.05.2009 and copy of the said letter was forwarded to E. E. (B. P.) for information.

(xiv) It is also to mention here that the trustee of the subject R. K. D.Ed. College Shri. Ramesh Khanvilkar has submitted the copy of the letter issued by Dy. Collector (Encroachment & Removal) Kurla-1 and Competent Authority under no. उपजि/अति/कुर्ला-१/कावि 183/2000 dtd. 17.02.2000. As mentioned in the said letter, as per the Notification no. एसएलएम/आयएमपी/सीए-वन/19 dtd. 28.09.1977, the part of land whereupon the structure of the college under reference is situated is a "Declared Slum" and as per the Maharashtra Slum (Improvement, Removal and Development) Act, 1971, the

responsibility of Removal of Encroachment in the “Declared Slum” on any land irrespective of ownership of land (except the land belongs to Central Govt.) is lies with the respective Dy. Collector/Additional Collector (Encroachment & Removal) therefore this office vide letter no.ACS/OD/180/AEBF dtd. 31.05.2017 and vide reminder under no. ACS/OD/189/AEBF dtd. 17.06.2017 informed to Dy. Collector (E. & R.) Kurla-1 and Competent Authority to verify and initiate the necessary action at their end.

Thereafter, the complainant Shri. Mohammed Yunus Khan has filed a complaint to Hon'ble Lok Ayukta for taking action on school and college building under reference. Pursuant to the said complaint, this office has vide letter bearing no.ACS/39219/AEBF dtd. 27.02.2017, submitted a detailed reply to the Desk officer of the office of Lok ayukta and Upa Lok Ayukta.”

3. Since each site referred to in the petition is considered and course of action is taken, we are of the opinion that the Public Interest Litigation need not be kept pending. Upon perusal of the course of action, the persons, who are interested in the matter, can take further steps strictly in accordance with the procedure contemplated. Accordingly, the Public Interest Litigation is disposed of.

(N. M. JAMDAR, J.)

(CHIEF JUSTICE)