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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 62 OF 2017

Mr. Kapil Sharma

.. Petitioner

Vs.

Mumbai Municipal Corporation and Anr.

.. Respondents

WITH
WRIT PETITION NO. 623 OF 2017

Dev Land Housing Pvt. Ltd.

.. Petitioner

Vs.

Mumbai Municipal Corporation and Anr.

.. Respondents

WITH
WRIT PETITION NO. 168 OF 2017

Mr. Gurdip Narang

.. Petitioner

Vs.

Mumbai Municipal Corporation and ors.

.. Respondents

WITH
WRIT PETITION NO. 366 OF 2017

Mr. Irfan Khan

.. Petitioner

Vs.

Mumbai Municipal Corporation & Ors.

.. Respondents

WITH
CHAMBER SUMMONS (L) NO.99 of 2017
IN
WRIT PETITION NO. 62 OF 2017

Shri Santosh Giri	.. Applicant
In the matter Between	
Mr. Kapil Sharma	.. Petitioner
Vs.	
Mumbai Municipal Corporation and anr.	.. Respondents

WITH
CHAMBER SUMMONS (L) NO. 100 OF 2017
IN
WRIT PETITION NO. 623 OF 2017

Shri Santosh Giri	.. Applicant
In the matter Between	
Dev Land Housing Pvt. Ltd.	.. Petitioner
Vs.	
Mumbai Municipal Corporation and anr.	.. Respondents

Mr. R. A. Thorat, Senior Advocate a/w Mr. P. J. Thorat for petitioner in WP No. 623 of 2017.

Mr. P. J. Thorat for petitioner in WP No.62 of 2017.

Mr. Vikramsinh Yadav a/w Parikshit Desai for petitioners in WP Nos.168 and 366 of 2017.

Mr. N. V. Walawalkar, Senior Advocate a/w Ms. Pallavi Thakar for MCGM.

Mr. Hemant Haryan, AGP for State in WP No. 168 of 2017.

Mr. Yuvraj Patil for applicant/intervener in CHSWL Nos.99 and 100 of 2017.

CORAM: NARESH H. PATIL &
M. S. KARNIK, JJ.

MARCH 23, 2017.

P.C.

1. Learned Senior Counsel appearing for the petitioner-developer in Writ Petition No. 623 of 2017 submits that on 20/2/2010, the petitioner-developer purchased the subject land by execution of a registered sale deed. The plans were submitted by the petitioner-developer with the Corporation. On 23/3/2010 the plans were sanctioned and IOD was granted. On 7/4/2010, the petitioner-developer obtained further Commencement Certificate upto 18th Floor. On 6/11/2013, Full Occupancy Certificate was granted by the Corporation. On 14/11/2014, the Corporation issued notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 (for short MMC Act, 1888) addressed to the petitioner-developer. The petitioner-developer thereafter preferred L.C. Suit No. 2909 of 2014 in the City Civil Court at Dindoshi, Bombay, challenging the said notice dated 14/11/2014. By an order dated 15/12/2014, the Civil Court granted ad-interim relief, staying the operation of the notice dated 14/11/2014. Learned counsel submits that ad-interim

relief is still in operation. The Corporation did not challenge the said order. It is further submitted that on 20/11/2016, the impugned notice was issued by the Corporation exercising powers under Section 53 of the Maharashtra Regional Town Planning Act, 1966 (for short MRTP Act, 1966).

2. Learned Senior Counsel for the petitioner-developer submits that though the Corporation was entitled to issue a further notice under Section 53 of the MRTP Act, 1966, the notice is challenged on the ground that it is vague in nature, it does not comply with the necessary / mandatory requirements in law. The petitioners are not aware as to on what issue the notice is required to be challenged or replied. Learned counsel, therefore, submits that appropriate directions are required to be issued in this regard.

3. Learned Senior Counsel appearing for the Corporation, on instructions, submits that a pursis was filed on behalf of the Corporation by the Designated Officer, P/South on 7/12/2016, in L.C. Suit No. 2909 of 2014, copy of the same is presented before us today, which reads as under :

“ The defendants MCGM most humbly beg to submit as under :-

That the present suit is filed by the plaintiff challenging the notice under section 351 of the M.M.C. Act under No. DO-II(AEBF-P/S Ward / D-71/351/65/B-51, dt. 14/11/2014 and speaking order passed under No. ACPS/24717/BF dt. 01/12/2014 pursuant to said notice.

These defendants has thereafter issued the notice under Section 53(1) of M.T.T.P. Act to the plaintiff for unauthorized work / development which also cover the work under section 351 of M.M.C. Act dt. 14/11/2014. The defendants are desirous to proceed with said notice issued under section 53(1) of M.T. & T.P. Act and therefore these defendants do not want to pursue the present notice under section 351 of the M.M.C. Act dt. 14/11/2014 and speaking order dt. 01/12/2014 pursuant to the said notice.

In view of above, suit be disposed off.

Hence, this pursis.”

Learned counsel further submits that an affidavit came to be filed by the petitioner-developer, through its authorized signatory on 10/2/2017 in L.C. Suit No. 2909 of 2014. Para 2 of the said affidavit dated 10/2/2017 reads as under :

“2. I say that the contents of said pursis positively show that no reason of any nature is given by the Defendants as to why they have decided to withdraw notice dated 14th

November, 2014 and Order dated 1st December, 2014. I say that as such the alleged withdrawal of said notice and order are arbitrary acts on the part of Officers of the Defendants. I say that since on account of issuance of impugned Notice dated 14th November, 2014 under section 351 of MMC Act, the subsequent notice dated 28th April 2016 issued under section 53(1) of MRTP Act is not enforceable, the Plaintiffs intend to pursue their remedy in relation to impugned notice and order in the present suit. I say that in the said circumstances the Plaintiffs are not willing to withdraw the present suit. I deny that on account of withdrawal of Impugned Notice and Order, the present suit is required to be disposed off as falsely claimed by the Defendants.

I therefore submit that the pursis as filed by the Defendants be rejected with costs.”

The copies of pursis dated 7/12/2016 and the affidavit dated 10/2/2017 are taken on record and marked “X” Colly. for identification.

4. Learned counsel appearing for the petitioners submits that appropriate representation would be submitted in response to the notice issued under Section 53(1) of the MRTP Act, 1966, which may not be treated as an application under Section 44 of the MRTP Act, 1966.

5. Learned Senior Counsel appearing for the Corporation, on instructions from Mr. A. D. Jagtap (S.E. (B&F)) and Mr. Parag Nikale (S.E. B.P), P/South Ward, who are present in court, makes a statement that notice under Section 351 of MMC Act, 1888 stands withdrawn by the Corporation. Learned counsel further submits that in respect of notice under Section 53 of the MRTP Act, 1966, the Corporation would look into the representation, if any, filed by the petitioners. It is further submitted that after considering the same and after extending hearing to the parties, the Corporation will pass a brief reasoned order.

6. We have perused the record placed before us, pursis dated 7/12/2016 and the affidavit dated 10/2/2017 filed in L.C. Suit No. 2909 of 2014. We find that in view of pursis dated 7/12/2016 and the statement made before us today by the learned Senior Counsel appearing for the Corporation, the noticed issued by the Corporation under Section 351 of MMC Act, 1888 dated 14/11/2014 addressed to the petitioner-developer stands withdrawn. In that view of the matter, the challenge to the said notice dated 14/11/2014 in L.C. Suit No. 2909 of 2014 does not survive. The Civil Court shall pass appropriate orders at the earliest on any of the parties moving the Civil Court, in view of the above observation.

7. In the facts of the case and on the request made, in respect impugned notice under Section 53 of the MRTP Act, 1966, the petitioners are permitted to file representation within three weeks. In case such a representation is received within three weeks from today by the Corporation, we direct the Corporation to consider the same on its own merits. The Corporation would be entitled to hear the petitioners, if found necessary. The concerned Designated Officer of the Corporation shall pass a brief reasoned order.

8. The petitioner-developer shall also furnish details of the occupants of the flats to the Designated Officer within a week's time.

9. The Corporation shall complete the exercise of passing a reasoned order within four weeks from the receipt of the representation of the petitioners. The status quo as on today shall be maintained by the parties till the passing of a reasoned order by the Designated Officer. In case the Designated Officer passes an adverse order against the petitioners, the same shall not take effect for a period of two weeks from the date of the receipt of the order by the petitioners.

10. Learned counsel appearing for the petitioners submits that consequent to issuance of notice under Section 53(1) of the MRTP Act,

1966, the Corporation had initiated prosecution against the petitioners on which FIR came to be registered. Learned counsel submits that in view of the subsequent developments, the Corporation be directed not to take any coercive steps against the petitioners till the Designated Officer passes order. Learned counsel appearing for the Corporation submits that till the Designated Officer decides the representation, appropriate orders may be passed.

11. We, therefore, direct that till the order of the Designated Officer of the Corporation is communicated to the petitioners, the Corporation would not take any further steps against the petitioners in respect of the prosecution initiated against them. It is clarified that we have not expressed any opinion on the merits of the FIR registered against the petitioners.

12. Learned counsel appearing for the petitioners in Writ Petition Nos. 168 and 366 of 2017 submits that petitioners in Writ Petition Nos.168 and 366 of 2017, being occupants of the subject building, may also be covered by the aforesaid observations and directions. We directed that the above stated directions are applicable to other petitioners too.

13. The issue raised by the Corporation seems to be pending since last three years. We expect the Corporation to arrive at a final decision at the earliest on its own merits.

14. Learned counsel appearing for the applicant in Chamber Summons (L) Nos. 99 and 100 of 2017 submits that on his complaint, the action was initiated by the Corporation. We have noted the submissions advanced.

15. In view of the above observations and directions, all the petitions are disposed off. All issues on merits are kept open. It is clarified that we have not expressed any opinion on merits of the matter.

16. In view of the disposal of the petitions, Chamber Summons (L) Nos. 99 and 100 of 2017 stand disposed of.

17. All concerned to act on an authenticated copy of this order.

(M. S. KARNIK, J.)

(NARESH H. PATIL, J.)