

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

WRIT PETITION NO.1417 OF 2016

...  
 Shagun Hospitality Pvt. Ltd. & Anr. ..Petitioners.  
 V/s.  
 Maharashtra Housing and Area  
 Development Authority & Ors. ..Respondents.

WITH

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.556 OF 2016

...  
 Shagun Hospitality Pvt. Ltd. ..Appellant  
 v/s.  
 Anand Bhuvan Rehewasi  
 Welfare Association & ors. ...Respondents  
 (By Consent Taken on Record)

...

Ms.Kavita A.Shah for the Petitioners/Appellant.  
 Mr.P.G. Lad for Respondent Nos.1 to 3.  
 Mr.Sagar Patil for Respondent- MCGM.

...

**CORAM : A.A. SAYED &****N. J. JAMADAR, JJ.****DATED : 14 DECEMBER 2018****P.C.:**

The prayers sought in the Petition read as under:

“(a) That this Hon'ble Court may be pleased to issue writ of mandamus or any other Writ, order or Direction in the nature of mandamus thereby directing the Executing Engineer, G/North

Division, Mumbai Building Repairs and Reconstruction Board, the Respondent No.3 herein to forthwith withdraw and/or cancel the impugned NOC/Order bearing No.TE/ON/WO/1675/2016 dated 13-04-2016 being Exhibit “K” to this Writ Petition and No Objection Certificate dated 8-05-2015 bearing No.4/181/899/2015 issued by the Respondent No.1 being Exhibit “K-1” to this Writ Petition.

(b) That this Hon'ble Court may be pleased to issue writ of certiorari or any other Writ, Order or Direction in the nature of Certiorari thereby quashing and setting aside the impugned order/NOC No.No.TE/ON/WO/1675/2016 dated 13-04-2016 issued/passed by the Executive Engineer, G/North Division Mumbai Buildign Repairs and Reconstruction Board being Exhibit “K” to this Writ Petition and No Objection Certificate dated 8-05-2015 bearing No.4/181/899/2015 issued by the Respondent No.1 being Exhibit “K-1” to this Writ Petition.

(c) That this Hon'ble Court may be pleased to issue an appropriate Writ, Order or Direction thereby directing the Respondent Nos.8 and 9 not to grant any Intimation of Disapproval (IOD) u/w 346 of the M.M.C. Act, 1888 or Commencement Certificate u/s 45 of the M.R. & T.P. Act, 1966 in favour of the Respondent Nos.4 and 5 or other occupants of building known as Anand Bhuvan situated at T.H.Kataria Marg, Mahim, Mumbai 400 016 on the basis of or on the strength of the impugned order dated 13-04-2016 passed by the Executive Engineer, G/North Division, Mumbai Building Repairs and Reconstruction Board, being Exhibit “K” to this Writ Petition and No Objection Certificate dated 8-05-

2015 bearing No.4/181/899/2015 issued by the Respondent No.1 being Exhibit “K-1” to this Writ Petition.”

2. Learned Counsel for the MHADA points out that repairs to the building in question have already been carried out. It is also pointed out that the Petitioners have also filed a suit in the City Civil Court, Mumbai, in the year 2015, which is pending, and the Petitioners did not succeed in obtaining any orders of restraint from carrying out the repairs.

3. In view of the above, we are not inclined to entertain the Petition. The Petition is, accordingly, dismissed. We, however, leave it open for the Petitioners to raise the contention that the NOC was wrongly issued by MHADA, in the suit in accordance with law, if so advised. All contentions in that regard are kept open.

4. For the completion of record, we may state that though the learned Counsel for the Petitioners has relied upon the judgment of the Supreme Court in **Whirlpool Corporation v/s. Registrar of Trade Marks, Mumbai & ors. (1999) Vo.101(1) Bom.L.r. 448 (SC)**, in the facts of the present case, the exercise the discretionary writ jurisdiction of this Court to entertain the Petition is not at all warranted.

5. Inasmuch as the repairs to the building in question are now already carried out, no interference is called for in the impugned order dated 28-04-2016 of the City Civil Court, Mumbai, dismissing the Notice of Motion, the Appeal from Order No.556 of 2016 is also dismissed.

**(N. J. JAMADAR,J.)**

**(A.A.SAYED, J.)**