IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.22038 OF 2018
WITH
CIVIL APPLICATION (STAMP) NO.22039 OF 2018

Delux Polymer Private Limited,]
A Company incorporated under the]
Companies Act, 1956, having its registered]
address at 15-17, Ground Floor, Raghuvanshi]
Mills Compound, Senapati Bapat Marg,] .... Appellant /
Lower Parel, Mumbai – 400 013.] Applicant

Versus

1. Designated Officer/Asst. Engineer (B&F),]
G/South Ward Municipal Office,]
N.M. Joshi Marg, Lower Parel,]
Mumbai – 400 013.]
2. Municipal Corporation of Greater Mumbai,]
A Body Corporate, constituted under the]
Mumbai Municipal Corporation Act, 1888,]
Having its Office at Mahapalika Bhavan,]
Mahapalika Marg, Opp. C.S.T., Fort,]
Mumbai – 400 001.] .... Respondents

ALONG WITH

APPEAL FROM ORDER (STAMP) NO.22379 OF 2018
WITH
CIVIL APPLICATION (STAMP) NO.22380 OF 2018

M/s. Everlasting Properties LLP,]
A Limited Liability Partnership Firm and]
having its office at Elegant House,]
Raghuvanshi Mills Compound, 11/12]

Senapati Bapat Marg, Mumbai – 400 013]
Through its Authorized Signatory :-] .... Appellant /
Mr. Vipul Dhanvantrai Mehta] Applicant

Versus

1. Municipal Corporation for Greater Mumbai]
A local Statutory Body, having its office]
inter alia at Mahapalika Building,]
Mahapalika Marg, Fort, Mumbai – 400 001]
2. Assistant Municipal Commissioner,]
G/South Ward, Municipal Office,]
N.M. Joshi Marg, Mumbai – 400 013.] .... Respondents

ALONG WITH

APPEAL FROM ORDER (STAMP) NO.22387 OF 2018
WITH
CIVIL APPLICATION (STAMP) NO.22390 OF 2018
AND
CIVIL APPLICATION (STAMP) NO.24599 OF 2018

Babulal Bohra of Mumbai,]
Indian Inhabitant, Aged 68 Years]
Having address at 1st Floor, above the Bath]
Shop, Raghuvanshi Mansion, Senapati] .... Appellant /
Bapat Mart, Lower Parel, Mumbai – 400 013.] Applicant

Versus

1. Designated Officer/Asst. Engineer (B&F),]
G/South Ward Municipal Office,]
N.M. Joshi Marg, Lower Parel,]
Mumbai – 400 013.]
2. Municipal Corporation of Greater Mumbai,]
A Body Corporate, constituted under the]
Mumbai Municipal Corporation Act, 1888,]
Having its Office at Mahapalika Bhavan,]

Mahapalika Marg, Opp. C.S.T., Fort,]
Mumbai – 400 001.] .... Respondents

ALONG WITH

APPEAL FROM ORDER (STAMP) NO.22397 OF 2018
WITH
CIVIL APPLICATION (STAMP) NO.22398 OF 2018

ALONG WITH

APPEAL FROM ORDER (STAMP) NO.22406 OF 2018
WITH
CIVIL APPLICATION (STAMP) NO.22407 OF 2018

M/s. Renaissance Paints Pvt. Ltd.,]
A Company incorporated under the]
Companies Act, 1956, having its]
address at Warden House, 1st Floor,] .... Appellant /
P.M. Road, Fort, Mumbai – 400 001.] Applicant

Versus

1. Designated Officer/Asst. Engineer (B&F),]
G/South Ward Municipal Office,]
N.M. Joshi Marg, Lower Parel,]
Mumbai – 400 013.]
2. Municipal Corporation of Greater Mumbai,]
A Body Corporate, constituted under the]
Mumbai Municipal Corporation Act, 1888,]
Having its Office at Mahapalika Bhavan,]
Mahapalika Marg, Opp. C.S.T., Fort,]
Mumbai – 400 001.] .... Respondents

ALONG WITH

APPEAL FROM ORDER (STAMP) NO.22411 OF 2018
WITH
CIVIL APPLICATION (STAMP) NO.22414 OF 2018

M/s. Percept Advertising Ltd.,]
A Company registered under the]
Companies Act, 1956, and having its]
office at P-3, Ground Floor, Main Exit Gate,]
Raghuvanshi Estate, 11/12, Senapati Bapat]
Marg, Mumbai – 400 013.]
Through its Authorized Signatory :-] .... Appellant /
Mrs. Shweta Brijesh Solkar] Applicant

Versus

1. Municipal Corporation for Greater Mumbai]
A local Statutory Body, having its office]
inter alia at Mahapalika Building,]
Mahapalika Marg, Fort, Mumbai – 400 001]
2. Assistant Municipal Commissioner,]
G/South Ward, Municipal Office,]
N.M. Joshi Marg, Mumbai – 400 013.] .... Respondents

ALONG WITH

APPEAL FROM ORDER (STAMP) NO.23054 OF 2018
WITH
CIVIL APPLICATION (STAMP) NO.23056 OF 2018

1. Smt. Durgavati Ramkripal Jaiswar,]
Aged 56 Years, Occ.: ....]
2. Ramkripal Ramkaran Jaiswar,]
Aged 59 Years, Occ.: ....]
Both of Mumbai, Indian Inhabitants,]
Carrying on business from Gala Nos.G-100]
and G-101, Ground Floor, Behind Shree]
Krishna Temple, Raghuvanshi Mills]
Compound, C.S. No.107, Lower Parel]
Division, 11/12, Senapati Bapat Marg,] .... Appellant /
Lower Parel, Mumbai – 400 013.] Applicant

Versus

1. Designated Officer/Asst. Engineer (B&F),]
G/South Ward Municipal Office,]
N.M. Joshi Marg, Lower Parel,]
Mumbai – 400 013.]
2. Municipal Corporation of Greater Mumbai,]
A Body Corporate, constituted under the]
Mumbai Municipal Corporation Act, 1888,]
Having its Office at Mahapalika Bhavan,]
Mahapalika Marg, Opp. C.S.T., Fort,]
Mumbai – 400 001.] .... Respondents

Ms. Pooja Pandey, I/by Mr. Ashok Pande, for the Appellant-Applicant in AO(St.)/22379/2018 and AO(St.)-23054/2018.

Mr. Prasad K. Dhakephalkar, Senior Counsel, a/w. Mr. Amogh Singh, I/by Mr. Dhirendra Pratap Singh, for the Appellant in AO(St.)/22387/2018, AO(St.)/22038/2018, AO(St.)/22397/2018 and AO(St.)/22406/2018.

Mr. Vijay S. Thorat, Senior Counsel, with Mr. Ashok Pande, for the Appellant-Applicant in AO(St.)/22411/2018.

Mr. Atul G. Damle, Senior Counsel, a/w. Mr. J.P. Mishra and Mr. Awadhesh R. Pandey, for the Appellant in AO(St.)/23054/2018.

Mr. Narendra V. Walawalkar, Senior Counsel, with Mr. Dharmesh K. Vyhas, Mrs. Vidhya Gharpure and Mrs. Madhuri More, for the Respondents-Municipal Corporation in all the Appeals.

Mr. Sunil Tawade, Designated Officer/Assistant Engineer (Building and Factory), G/South Ward, of the Respondent-MCGM is present.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

RESERVED ON : 4TH SEPTEMBER, 2018.

PRONOUNCED ON : 24TH SEPTEMBER, 2018.

<u>JUDGMENT</u> :

1. As all these Appeals raise common questions of law and facts, they are being decided by this common Judgment.

2. They pertain to the structures situate in the precincts of 'Raghuvanshi Mill', Parel, Mumbai and are arising out of the common order passed by the City Civil Court, Mumbai, thereby dismissing various Notices of Motions taken out by the Appellants herein, seeking the relief of interim injunction, restraining the Respondent-Municipal Corporation from taking any action in pursuance of the notice and the order passed under Section 351 of the Mumbai Municipal Corporation Act, 1888.

3. It is common ground between the parties that within the compound of 'Raghuvanshi Mill', there are several buildings and structures, which were, at one point of time, used for the ancillary purpose of the 'Cotton Textile Mill'. However, during the course of the time, since last about more than 25 years, 'Raghuvanshi Mill' has been closed down and reached to the stage of liquidation. In order to over-come the said liquidation, 'Raghuvanshi Mill Limited' had proposed a 'Revival Plan' before the 'Board for Industrial and Financial Reconstruction', *(for short, the **"BIFR"**)*, which came to be accepted by the Appellate Authority of the 'Board for Industrial and Financial

Reconstruction'. In pursuance of it, the permission was given to sell these various buildings and structures situate in the compound of the 'Raghuvanshi Mill' to re-pay the debt of the Mill Workers. Accordingly, the Appellants in this case had purchased different parts of the buildings and structures in the compound of 'Raghuvanshi Mill' by virtue of registered 'Sale Deeds' in or about the year 2003-2004 and since then, they are using the same for commercial purposes and are running their respective businesses therein.

4. According to the Appellants, they are having all the necessary permissions / licenses, including the 'Shop and Establishment Certificate', issued by the Respondent-Municipal Corporation for conducting the businesses. Their structures are also assessed for the purpose of property tax since 1st April 1961, i.e. prior to the datum line of 1st April 1962. Thus, their structures are in existence since long and they are in authorized and lawful possession thereof. It is submitted that, against some of the Appellants, Respondent-Municipal Corporation has earlier, in the year 2013, issued notices under Section 354-A of the Mumbai Municipal Corporation Act, 1888, *(for short, "**the MMC Act**")*, alleging unauthorized additions and alterations to the existing structures. The Appellants, to whom the notices had been issued, have challenged those notices by filing Suits in the City Civil Court, Mumbai, and sought the relief of injunction, restraining the Respondent-

Municipal Corporation from acting on those notices. Some of those Suits are withdrawn and some are decreed. Those decrees are yet not set aside.

5. In this factual backdrop, the notices impugned in this case came to be issued by the Respondent-Municipal Corporation against the Appellants, under Section 351 of the MMC Act, on 23rd April 2018, calling upon them to show cause as to why an action should not be taken against them for carrying out unauthorized construction of the suit structures and for change of the user. The Appellants gave reply to those notices and produced various documents in support of their contention that, their structures are authorized and in existence since prior to the datum line. The Appellants were also given an opportunity of hearing before the Designated Officer/Assistant Engineer, (B & F), G/South Ward, Mumbai of the Respondent-Municipal Corporation, who has, thereafter by his detailed order dated 1st June 2018, rejected the contentions raised by the Appellants and called upon them to demolish the suit structures, holding those structures to be unauthorized and constructed in violation of the provisions of the Mumbai Municipal Corporation Act, 1888; Maharashtra Regional and Town Planning Act, 1966; and Development Control Regulations. It was held that, the Appellants have failed to submit any authentic document to prove that the suit structures are constructed as per the Rules approved by the Competent Authority or

further to prove that their structures are in existence since prior to the datum line of 1st April 1962, which is fixed by the Respondent-Municipal Corporation for tolerating the commercial structures. It was further held that, the Appellants have changed the user of the suit structures from 'Cotton Textile Mill' to the commercial business.

6. Being aggrieved thereby, the Appellants have approached the Trial Court seeking the relief of declaration that, the impugned notices and the orders passed under Section 351 of the MMC Act are illegal, null and void and for injunction, restraining the Respondent-Municipal Corporation from taking any action, much less, of demolition of the suit structures in pursuance of the said notices and orders.

7. Along with the Suits, the Appellants had filed these Notices of Motions alleging that, the action initiated by the Respondent-Municipal Corporation is not only against the well established tenates of law, but it is also malafide and motivated at the behest of the owner of the land, below the said Raghuvanshi Mill, namely, Khimji Bhagwandas Charity Trust. It was submitted that, the said Trust has already filed various Suits for eviction against the Appellants and other occupants and those Suits are pending in the Small Causes Court, Mumbai. As the said Trust is not successful in getting possession of the premises in those Suits, the Trust has approached the Respondent-Municipal Corporation and by

joining hands with the Authorities of the Respondent-Municipal Corporation, got these false notices issued. It was submitted that, the Respondent-Municipal Corporation itself is aware that the suit structures are in existence since prior to the datum line and, therefore, its legality cannot be challenged in any way. An attempt was also made to contend that, the Designated Officer has no authority to issue the notices or to pass the orders, under Section 351 of the MMC Act.

8. These Notices of Motions came to be resisted by the Respondent-Municipal Corporation, reiterating its stand that, these suit structures are illegal and unauthorized; therefore, the Respondent-Municipal Corporation, being the 'Planning Authority', is duty bound to take action against such illegal and unauthorized structures; especially in the light of the incident of fire in the Kamla Mills; that took place recently and in which 14 persons had lost their lives, as there was no way to rescue them because of the illegal construction that had mushroomed in the said compound.

9. It was submitted that, in order to avoid the repetition of such untoward incident, which occurred in Kamla Mill premises, the Respondent-Municipal Corporation was constrained to take a fresh review of the matter and to take action against the illegal and unauthorized constructions, which have come up in all the de-functunt

Mills, including that of the 'Raghuvanshi Mill'. It was admitted that, the Respondent-Municipal Corporation had received the complaint from M/s. Khimji Bhagwandas Charity Trust, dated 18th January 2018, which was also addressed to the Secretary of the Chief Minister, State of Maharashtra. The said complaint was also forwarded to the Respondent-Municipal Corporation, in which there were allegations of unauthorized constructions, additions, alterations, change of user in respect of the structures in this Raghuvanshi Mill Compound. Therefore, the Designated Officer of the Respondent-Municipal Corporation has conducted the inspection, took the photographs, drew the sketch and after carefully going through the entire record available with him, he came to the conclusion that, the structures under reference seem to be unauthorized, as they are not found reflected in the "Tikka Sheet' and the 'Approved Plans' of 1st October 1975 and 26th April 1977. Therefore, initially, the 'Stop Work Notice' was issued, under Section 354-A of the MMC Act. Appellants, however, continued and completed the construction of the suit structures. Hence, the 'Show Cause Notice', under Section 351 of the MMC Act, was issued to the Appellants.

10. After the Appellants gave reply to the said 'Show Cause Notice', an opportunity of hearing was given to the Appellants and thereafter, on perusal of the various documents produced by the Appellants, like their 'Sale Deeds', the 'Shop and Establishment License', the 'Assessment

Extract of the Municipal Property Tax', it was noticed that the Appellants were not having any 'Sanctioned Plan' or 'Approved Plan', either with the 'Sale Deeds' or 'Agreements of Sale' executed with them or any authentic document to prove the authorization of the suit structures. They also failed to prove that the suit structures, which are standing at site, at present, were in existence since prior to the datum line. It was held by the Designated Officer of the Respondent-Municipal Corporation that, mere assessment of the structures does not prove their authorization. The Appellants had also changed the user of the suit structures from 'Cotton Textile Mill' to commercial use and permission there-for was not obtained. In view thereof, a detailed order was passed on 1st June 2018, directing the Appellants to demolish the suit structures, they being illegal and unauthorized. According to the Respondent-Municipal Corporation, whatever action is taken by the Municipal Corporation in respect of the suit structures is, therefore, perfectly legal, after following the due process of law, and hence, it cannot be challenged in the Court. It was denied that the Designated Officer had no authority to issue the notices or to pass the order under Section 351 of the MMC Act. It was also denied that, the action was motivated or malafide.

11. As regards the earlier Suits filed by some of the Appellants, it was submitted by the Respondent-Municipal Corporation that, the notices

impugned in those Suits were issued under Section 354-A of the MMC Act and those notices were in respect of the additions and alterations made in the suit structures. Some of the Suits were withdrawn, as the requisite due procedure was not followed before passing the order of demolition; whereas, some of the Suits were decreed and the decrees thereof are challenged in this Court by preferring the Appeals. Thus, it was submitted that, as the construction of the suit structures is apparently illegal and unauthorized, the Appellants cannot be entitled to get any relief of interim injunction, as claimed by them in their Notices of Motions.

12. The Trial Court was, after hearing the submissions advanced by learned Senior Counsel for both the parties and after perusing the entire material on record, pleased to hold that the Appellants have failed to prove that the construction of the suit structures is legal and authorized and the change of the user is also with the requisite permission and, accordingly, the Trial Court has rejected their Notices of Motions.

13. This order of the Trial Court is challenged by learned Senior Counsels for the Appellants on various factual and legal aspects; whereas, supported by learned Senior Counsel for the Respondent-Municipal Corporation.

14. In order to prove that the suit structures are in existence since prior to the datum line, the main reliance of learned Senior Counsel for the Appellants is on the 'Assessment Extract' of the suit structures, which show that the suit structures were first assessed for property tax on 1st April 1961, which is prior to the datum line of 1st April 1962. According to learned Senior Counsel for the Appellants, admittedly, 'Raghuvanshi Mill' was in existence since long and all the suit structures are adjacent to the main structure of 'Raghuvanshi Mill' and at one point of time, they were definitely being used for the ancillary purposes. It is submitted that, if 'Raghuvanshi Mill' was in existence since prior to 1st April 1961, as its 'Assessment Extract' towards the property tax shows, then it follows that these structures were also in existence since prior to the datum line. It is submitted that, in some of the 'Assessment Extract' of the subsequent period, even the names of the Appellants are also appearing, thereby clearly indicating that, Appellants are in possession of these structures since long. It is also not that the Appellants are the ones, who had made the construction of these structures. Conversely, they had purchased the suit structures by virtue of 'Agreements of Sale' or 'Sale Deeds' from its earlier owners or the occupants. The fact remains that, the Appellants are in possession thereof since last more than, at-least, 15 years. They are carrying out business activities therein, after obtaining requisite permission from the Respondent-Municipal Corporation itself. They are having valid 'Shop and Establishment

Certificate'. According to learned counsel for the Appellants, therefore, it cannot be said that, the Appellants have made any change of user, so as to attract the action of demolition of the suit structures.

15. According to learned Senior Counsel for the Appellants, in this factual situation, therefore, when the Appellants have produced on record the documents of title to prove their ownership of the suit structures, their licenses and permission for carrying on business in the suit structures and the most important fact that the suit structures are assessed for property tax since prior to the datum line, the least expected from the Trial Court was to protect these structures, at-least, till the decision of the Suits. According to learned Senior Counsel for the Appellants, the Appellants have, thus, made out a prima facie case. The balance of convenience also lies in their favour that, if during pendency of the Suits, the structures are demolished, Appellants will loose their livelihood and, therefore, will suffer irreparable loss. Further, it is submitted that, in respect of some of the Appellants, even the decrees of injunctions are already passed in their favour and they are not set aside. In such situation, therefore, according to learned Senior Counsel for the Appellants, the Trial Court has committed an error in dismissing their Notices of Motions and refusing to grant the relief of interim injunction.

16. Per contra, according to learned Senior counsel for the

Respondent-Municipal Corporation, whatever structures, which were in existence when the assessment was made for the purpose of property tax for the first time in the year 1961, are no more in existence and in place thereof, totally new structures are erected and are standing, for the construction of which, no permission was obtained from the Respondent-Municipal Corporation. It is submitted that, despite the opportunities given to the Appellants to produce the 'Approved Plan' or requisite permission obtained, if any, before they carried out the construction, which is existing at the site, Appellants have failed to do so. Neither they have produced the 'Sanctioned Plan', nor the requisite permission before the Designated Officer, who has passed order under Section 351 of the MMC Act or even before the Trial Court. Even in this Court, it is submitted that, the entire reliance of the Appellants is only on the 'Assessment Extract' of property tax, which are in respect of the demolished structures and not that of the present structures.

17. According to learned Senior Counsel for the Respondent-Municipal Corporation, therefore, when the suit structures are apparently not constructed with due permission, then Appellants cannot be said to be having any prima facie case to get the relief of interim injunction. Learned Senior Counsel for the Respondent-Municipal Corporation has in this respect relied upon the well settled legal position, as enunciated in various decisions of this Court and the Hon'ble Supreme Court.

18. As regards the change of user, it is submitted that, all these structures were used earlier for the ancillary purpose of Cotton Textile Mill. Now they are put to commercial use and it is against the provisions of Rule 58 of the D.C. Regulations, as it is done without obtaining the permission from the Respondent-Municipal Corporation. Hence, according to learned Senior Counsel for the Respondent-Municipal Corporation, no fault can be found in the impugned order passed by the Trial Court, if the Trial Court has rejected the Notices of Motions filed by the Appellants; especially in the light of the fact that, it may take years together for the decision of the Suits and in the meanwhile, the possibility of repetition of the untoward incident, which happened in Kamala Mill, cannot be ruled out, and if it happens, it is ultimately going to result not only in the loss of property, but also in the loss of lives. It is submitted that, the Respondent-Municipal Corporation, being the 'Planning Authority', cannot, therefore, close its eyes and allow such illegal and unauthorized constructions to exist. It is submitted by learned Senior Counsel for the Respondent-Municipal Corporation that, the Trial Court has, therefore, after properly appreciating these aspects, refused to grant the relief of interim injunction and within the limited scope of the appeal against such discretionary order, this Court should restrain itself from interfering in the same.

19. In my considered opinion, before adverting to various legal aspects, it would be useful to deal with the factual aspects of each of this case.

20. As the entire reliance placed by learned Senior Counsel for the Appellants is on the 'Assessment Extract' to show that the first date of assessment to the property tax of the structures in 'Raghuvanshi Mill' was 1st April 1961, i.e. prior to the datum line of 1st April 1962, it is necessary to consider the nature of the structures existing then and what is the nature of the structure standing at present on the suit property.

21. In this respect, the 'Approved Plans', dated 1st October 1975 and dated 26th April 1977, along with the 'Tikka Sheets', will be relevant to know as to the nature of the structures reflected therein.

22. As these Appeals pertain to seven different structures, it would be necessary to discuss them separately as follows :-

Appeal From Order (Stamp) No.22411 of 2018

M/s. Percept Advertising Ltd.

23. The impugned notice and the order passed under Section 351 of the MMC Act gives the description of the suit structure as follows :-

> *"Unauthorized construction of commercial structure in open land, admeasuring 13.33 ft. x 14.38 ft. at one side and 7.42 ft. on other side and 8.34 ft. in height, as shown in the sketch attached, by using side brick masonry walls and ladi coba slab at M/s. 99 Pancakes, beside Exit Gate in 'Raghuvanshi Mill Compound', C.S. No.107, Lower Parel Division, 11/12, Senapati Bapat Marg, Lower Parel, Mumbai – 400 013."*

24. The structure shown in the 'Approved Plans' of the years 1975 and 1977 of this site is bearing *"Structure No.4"* and the description thereof given is as *"W.C. and Urinals".* Now, admittedly, the structure, which is standing, at present is a *"Pancake Shop"*. The photographs of the present structure are also more than sufficient to prove that, the structure, which is standing, at present is not the one which was constructed as per the 'Approved Plans' of the years 1975 and 1977 and which is reflected in the 'Tikka Sheets' that of *"W.C and Urinals"*. Thus, it is clear that, the structure, which is subject matter of the notice, is the one of Shop or Bakery premises, newly constructed in the place of *"W.C. and Urinals"*.

25. Now, in view of this change in the structure, it was incumbent on the Appellant to produce on record some documents to show that he had made this construction after obtaining due permission from the Respondent-Municipal Corporation. As a matter of fact, even the 'Sale Deed' dated 9th March 2004, under which this Appellant had purchased the suit structure, gives its description in the 'Second Schedule' as follows :-

"(i) One independent ground floor structure, opposite the main building of 'Raghuvanshi Mills Ltd.' (currently termed as 'Buildings P1, P2 of the Purchasers') erected on the said land (inclusive of the Power Service Station), including the toilet Block bordered as follows :-

On the South : The Security House referred above and Senapati Bapat Marg;

On the North : Transformer / Sub-station;

On the East : Building of Tata Power Distribution Division;

On the West : P1, P2 Buildings of the Purchasers.

Admeasuring an area of 2,513.10 sq.ft., as clearly demarcated and drawn up, as set out in the Annexure-2, annexed to these presents.

(ii) One independent ground floor structure, being the Security House created at the Main Gate bordered as follows :-

On the South : Senapati Bapat Marg;

On the North : Transformer / Sub-station;

On the East : Building of Tata Power Distribution Division;

On the West : P1, P2 Buildings of the Purchasers.

Admeasuring an area of 169.20 sq.ft., as clearly demarcated and drawn up, as set out in the Annexure-1, annexed to these presents."

26. Therefore, the structure, which can be seen even in the 'Sale Deed', is of one story, inclusive of the Power Service Station and the Toilet Block; whereas, the structure, which is standing at present on the suit

site is totally a different structure of shop premises, which is not used for Power Service Station or the Toilet Block. It has totally changed its appearance and everything, for putting it to use for sale of Pancakes. Admittedly, the Appellant has failed to show that, he has carried out this change in the suit structure after obtaining requisite permission from the Respondent-Municipal Corporation. It, therefore, follows that, whatever structure, which is in existence and standing at present, is not the one in respect of which the first assessment for property tax was made by the Respondent-Municipal Corporation in the year 1961, i.e. prior to the datum line. Therefore, it is needless to state that, unless the Appellant had produced some document authorizing this change in the structure, the structure is required to be held and called as unauthorized and illegal. Appellant cannot take the benefit of the 'Assessment Extract' for proving the legality of the suit structure, which is standing at the site at present and in respect of which, the impugned notice is issued. Needless to state that, as regards the other documents, like the 'Shop and Establishment Certificate' or the 'Sale Deed', they cannot prove the legality or authorization of the suit structure.

Appeal From Order (Stamp) No.22397 of 2018

M/s. Renaissance Paints Pvt. Ltd.

27. A notice was issued to this Appellant, under Section 351 of the MMC Act, in respect of the unauthorized construction of;

"Mezzanine Floor", admeasuring 3.60 meters x 21.0 meters; 14.60 meters x 6.30 meters; and 3.60 meters x 14.70 meters, with floor height 2.45 meters. It is situate at Ground Floor in Block No.7."

28. The 'Approved Plans' of the years 1975 and 1977, including the 'Tikka Sheets', do not show the existence of any such structure at the site. Naturally, it was for the Appellant again to show that the construction of the present structure was carried out with due permission, after getting the 'Plan' sanctioned, but no such permission or the 'Plan' is produced on record.

29. Thus, the 'Agreement of Leave and License', dated 5th April 2016, executed in respect of this structure does not show the existence of the structure, which is standing at present and which is being used for the commercial purpose of M/s. Renaissance Paints Show Room. The earlier notice issued in the year 2007, under Section 354-A of the MMC Act, when the construction work was in progress, and the present notice, which is issued under Section 351 of the MMC Act, when the construction is complete, in that context is, therefore, material to prove that the present structure is not the one, which was existing in the year 1961. The construction of this structure was commenced in 2007 and despite the 'Stop Work Notice' issued under Section 354-A of the MMC Act, it was completed. The order passed by the Designated Officer, under

Section 351 of the MMC Act, shows that, proposal for regularization of construction was rejected. In the absence of any 'Sanctioned Plan' or permission produced on record for carrying out this construction, therefore, it will have to be held that, the suit construction is illegal and unauthorized. Therefore, this construction is required to be held as illegal and unauthorized.

Appeal From Order (Stamp) No.22038 of 2018

M/s. Delux Polymer Pvt. Ltd.

30. The notice issued, under Section 351 of the MMC Act, to the Appellant herein describe the structure, which is standing at the site, as follows :-

> *"Unauthorized construction of 'Commercial Show Room' on open land, admeasuring 20.16 meters x 5.38 meters and 11.59 meters x 1.62 meters and having height 5.76 meters, with side brick masonry walls and A.C. Sheet roofing at M/s. Little Naps, near Block Nos.19 and 22-A in 'Raghuvanshi Mill Ltd.', C.S. No.107, Lower Parel Division, 11/12, Senapati Bapat Marg, Lower Parel, Mumbai – 400 013."*

31. The order passed by the Designated Officer and the 'Approved Plans' of the years 1975 and 1977, with 'Tikka Sheets', go to show that, no such structure was found to be there in those 'Plans' and 'Tikka Sheets'. No permission for construction of the same or its change of user

from 'Cotton Textile Mill' to commercial use as 'M/s. Delux Polymer Pvt. Ltd.' is produced on record. Therefore, again it follows that, this structure is also unauthorized. In respect thereof, the notice under Section 354-A of the MMC Act was also issued, but despite that, the construction was continued by the Appellants and, therefore, the notice under Section 351 of the MMC Act is issued, after following the due process of law. Surprisingly, the 'Leave and License Agreement' between M/s. Delux Polymer Pvt. Ltd. and M/s. Little Naps, dated 20th April 2016, also does not show that the alleged structure was constructed after obtaining the requisite permission.

<u>Appeal From Order (Stamp) No.22379 of 2018</u>

M/s. Everlasting Properties LLP.

32. The notice issued to this Appellant gives the description of the structure standing at the site as follows :-

> *"Unauthorized construction of 'Shed', with Fiber Sheets roofing and Hollow Square Steel Pipes, admeasuring 14.0 meters x 2.7 meters, behind Block No.14 (M/s. Address Home), <u>which is extension to the structure Block No.14</u>, admeasuring 14.0 meters x 9.4 meters, on Cotton Textile Mill land at 'Raghuvanshi Mill Compound', C.S. No.107, Lower Parel Division, 11/12, Senapati Bapat Marg, Lower Parel, Mumbai – 400 013 and using it for commercial purpose."*

33. The 'Approved Plans' of the years 1975 and 1977, along with the

'Tikka Sheets', do not show the existence of any such structure. Admittedly, the user of the premises is changed from 'Cotton Textile Mills' to commercial purpose in the name of 'M/s. Everlasting Properties LLP'. No permission for the present structure is produced on record, nor the 'Sanctioned Plans'. Previously, in the year 2005, the notice under Section 354-A of the MMC Act was issued to the Appellant for stopping such unauthorized construction, but, despite that, the construction proceeded. Therefore, in respect of this construction also, it has to be held that, it is illegal and unauthorized.

<u>Appeal From Order (Stamp) No.23054 of 2018</u>

Smt. Durgavati Ramkripal Jaiswar and Anr.

34. The 'Stop Work Notice' of the construction of this new structure was given on 20th November 2012. At that time, the construction was of Ground + 1st Floor, with brick masonry wall and M.S. Angles and coba ladi on open land. Thereafter, the Appellants have completed the construction in R.C.C. Building and the present construction is, as described in the impugned notice, that of;

> *"Ground + 2 upper floors structure, made up of brick masonry walls and ladi coba slab, admeasuring 21.94 meters x 5.29 meters + 9.28 meters x 9.08 meters; on the Ground Floor, admeasuring 21.94 meters x 5.29 meters + 9.28 meters x 9.08 meters on 1st Floor and 21.94 meters x 5.29 meters + 9.28 meters x 9.08 meters x 3.86 meters on the 2nd Floor <u>on open</u>*

land, behind Shree Krishna Temple in 'Raghuvanshi Mill Compound', C.S. No.107, Lower Parel Division, 11/12 Senapati Bapat Marg, Lower Parel, Mumbai – 400 013".

35. The user is changed from 'Cotton Textile Mill' to commercial purpose. As per the 'Tikka Sheet : Editions 1969 and 1980', there is no structure, but the premises are shown as 'open land'. In the 'Approved Plans' of the years 1975 and 1977, the site is shown as 'Garden'. Thus, the suit structure does not find reflected in the earlier 'Approved Plans' or in the 'Tikka Sheets'. No permission or the 'Sanctioned Plan' is produced on record to prove that, the suit structure is authorized and, therefore, it follows that the said structure is also illegal and unauthorized.

Appeal From Order (Stamp) No.22387 of 2018

Babulal Bohra

36. In respect of this structure also, the notice was issued under Section 354-A of the MMC Act on 22nd May 2007, when the construction was in progress. At that time, the description of the construction, as given in the said notice, is of;

"'Commercial Premises', admeasuring 24.0 meter x 26.88 meter, by erecting B.M. Partition Walls and construction of frame work with M.S. Steel Sections for 'Mezzanine Floor', admeasuring 24.0 meter x 9.77 meter in it and also carried out change of user at above M/s. The Bath Shop at 1st Floor, 'Raghuvanshi Mansion',

Raghuvanshi Mill Compound Ltd., C.S. No.107, Lower Parel Division, 11/12 Senapati Bapat Marg, Lower Parel, Mumbai - 400 013."

37. Neither the 'Approved Plans' of the years 1975 and 1977 or the 'Tikka Sheets' show the existence of this structure. The user of the structure is also changed from 'Cotton Textile Mill' to commercial purpose. No document is produced on record to prove that the construction of the structure was done after obtaining requisite permission from the Respondent-Municipal Corporation. Therefore, it follows that, this construction is also illegal and unauthorized.

Appeal From Order (Stamp) No.22406 of 2018

M/s. Renaissance Paints Pvt. Ltd.

38. The impugned notice shows the description of the structure as follows :-

"Unauthorized construction of commercial structure in place of Electric Sub-Station with B.M. Walls and R.C.C. Slab, admeasuring 12.44 meters x 12.26 meters and having height of 2.61 meters and 7.81 meters at M/s. Nutuzzi, Block No.7, 'Raghuvanshi Mill Compound', C.S. No.107, Lower Parel Division, 11/12 Senapati Bapat Marg, Lower Parel, Mumbai – 400 013."

39. No such structure is found reflected in the 'Approved Plans' of the years 1975 and 1977, or in the 'Tikka Sheets' of the relevant period,

prior to the datum line, or, even thereafter. No document is produced on record to prove that the construction of the structure was done after obtaining requisite permission from the Respondent-Municipal Corporation. Admittedly, there is change of user from 'Cotton Textile Mill' to commercial purpose.

40. In these factual aspects, it can be, thus, clearly seen that, all these structures, which are standing at present and in respect of which the impugned notices are issued under Section 351 of the MMC Act, are constructed recently and without obtaining the requisite permission or getting the 'Plan' sanctioned from the Respondent-Municipal Corporation. Therefore, on the face of it also, these suit structures are illegal and unauthorized.

41. The question for consideration is, therefore, *'whether such apparently and patently illegal and unauthorized constructions can be protected, even at this interim stage of the Suit ?'*

42. To answer this question, it would be necessary to first deal with some legal contentions advanced by learned Senior Counsel for the Appellants.

43. In the first place, it is submitted that, the Designated Officer, who

had issued the impugned notices and passed the orders under Section 351 of the MMC Act, was not the 'Competent Authority'. It is submitted that, notice and order under Section 351 of the MMC Act must be issued by the 'Commissioner' himself or by an 'Agent', duly authorized by the 'Commissioner' in that behalf. Here in the case, it is submitted that, no such authorization is produced on record.

44. It is submitted that, the Trial Court has, however, relied upon the general power of delegation, as contemplated under Section 68 of the MMC Act, which cannot be sufficient.

45. However, in my considered opinion, this contention can no more survive now, in view of the copy of the 'Notification' dated 4th April 2013, bearing No.010, filed on record by the Respondent-Municipal Corporation, which shows that the 'Designated Officer', in this case, the 'Assistant Engineer', (B & F), G/South Ward, was authorized by the 'Commissioner' of the Respondent-Municipal Corporation, specifically to act under Section 351(1) of the MMC Act. Thus, there is specific delegation of power in this respect, as contemplated under this Section.

46. The next submission advanced by learned Senior Counsel for the Appellants is that, M/s. S.S.G. Realtors and Developers Private Limited had taken over the land of 'Raghuvanshi Mill', as per the order passed by

the Appellate Authority of the 'Board for Industrial and Financial Reconstruction'. Hence, the objection as regards the change of the user of the suit premises cannot be sustainable. However, as rightly pointed out by learned Senior Counsel for the Respondent-Municipal Corporation, Rule 58 of the Development Control Regulations in this respect becomes relevant, which clearly and exclusively deals with the *'Development or Redevelopment of the Lands of the Cotton Textile Mills'*, which contemplates that,

> *"Only with the previous approval of the 'Commissioner' to a layout prepared for development or re-development of the entire open land and built-up area of a sick and/or closed Cotton Textile Mill and on such conditions deemed appropriate and specified by him and as a part of a package of measures recommended by the Board of Industrial and Financial Reconstruction (BIFR) for the revival/rehabilitation of a potentially viable sick and/or closed Mill, the Commissioner may allow :*
>
> *(a) the existing built-up areas to be utilized -*
>
> *(i) for the same Cotton Textile or related user subject to observance of all other Regulations;*
>
> *(ii) for diversified industrial user in accordance with the industrial location policy, with office space only ancillary to and required for such users, subject to and observance of all other Regulations;*
>
> *(iii) for commercial purposes, as permitted under these Regulations."*

47. Therefore, this provision clearly mandates that the approval of the

'Commissioner' to the 'Lay-Out' prepared for development or re-development of the entire open land is necessary, before carrying out any changes to the existing structures. Rule 58(1)(b) also goes to show that, the specific area of FSI is also fixed for carrying out this construction and beyond it, such construction cannot be carried out. Only after the proposal is approved by the BIFR and the Lay-Out is sanctioned by the Commissioner, such construction can be carried out. Here in the case, there is nothing on record to show that, the compliance of Rule 58(1) of the D.C. Regulations was done by M/s. S.S.G. Realtors and Developers or by any of the Appellants. Therefore, whatever construction is carried out is also against and in breach of Rule 58 of the Development Control Regulations for Greater Mumbai, 1991. A change of user of these premises from 'Cotton Textile Mill' to commercial purpose, therefore, also being without permission or approval of the Commissioner, it is against Rule 58(1) of the D.C. Regulations. Hence, it cannot be protected as such.

48. Now reverting to the question, as to '*whether the construction of suit structures done, which is without permission or getting the 'Plan' sanctioned from the Respondent-Municipal Corporation, can be protected?'* There is no dispute on factual score that, the due requisite procedure of giving show cause notice and opportunity of hearing to the Appellants was followed by the Designated Officer. Thereafter, he has

passed a detail speaking order, discussing every document relied upon by the Appellants and holding how it does not prove the legality of the construction. The provisions of Section 351 of the MMC Act in this respect being relevant, it would be useful to reproduce them as under :-

"Section 351 : Proceedings to be taken in respect of buildings or work commenced contrary to section 347.

(1) If the erection of any building or the execution of any such work as is described in section 342, is commenced contrary to the provisions of [1] [section 342 or 347], the Commissioner, unless he deems it necessary to take proceedings in respect of such building or work under section 354, shall-

(a) by written notice, require the person who is erecting such building or executing such work, or has erected such building or executed such work, [2] [or who is the owner for the time being of such building or work], [3] [within seven days from the date of service of] such notice, by a statement in writing subscribed by him or by an agent duly authorized by him in that behalf and addressed to the Commissioner, to show sufficient cause why such building or work shall not be removed, altered or pulled down; or,

(b) shall require the said person on such day and at such time and place as shall be specified in such notice to attend personally, or by an agent duly authorized by him in that behalf, and show sufficient cause why such building or work shall

not be removed, altered or pulled down. [Explanation.- "To show sufficient cause" in this sub-section shall mean to prove that the work mentioned in the said notice is carried out in accordance with the provisions of section 337 or 342 and section 347 of the Act.]

(2) If such person shall fail to show sufficient cause, to the satisfaction of the Commissioner, why such building or work shall not be removed, altered or pulled down, the Commissioner [5] [* * * *] may remove, alter or pull down the building or work and the expenses thereof shall be paid by the said person. [6] [In case of removal or pulling down of the building or the work by the Commissioner, the debris of such building or work together with other building material, if any, at the sight of the construction, belonging to such person, shall be seized and disposed of in the prescribed manner and after deducting from the receipts of such sale or disposal, the expenditure incurred for removal and sale of such debris and material, the surplus of the receipts shall be returned by the Commissioner, to the person concerned.]*

(3) No court shall stay the proceeding of any public notice including notice for eviction, demolition or removal from any land or property belonging to the State Government or the Corporation or any other local authority or any land which is required for any public project or civil amenities, without first giving the Commissioner a reasonable opportunity of representing in the matter.

49. Section 351 of the MMC Act, thus, contemplates that, if erection of any building or execution of such work is commenced contrary to the provisions of Section 352 or Section 357 of the MMC Act, the 'Commissioner', unless he deems it necessary to initiate proceedings in respect of such building or work under Section 354 of the MMC Act, shall, by written notice, require such person, who is erecting such building or executing such work or has erected such building or executed such work, to show sufficient cause as to why such building or work shall not be removed, altered or pulled down. An 'Explanation' to the said Section makes it clear that, to show sufficient cause, in this sub-section, means to prove that the work mentioned in the said notice is carried out in accordance with the provisions of Section 337 or Section 342 and Section 347 of the MMC Act.

50. Section 337 of the MMC Act contemplates that,

> *"Every person, who shall intend to erect a building, shall give to the Commissioner notice of his said intention in a form, obtained for this purpose under Section 344, specifying the position of the building intended to be erected, the description of building, the purpose for which it is intended, its dimensions and the name of the person, whom he intends to employ to supervise its erection."*

51. As per sub-section (2) of Section 337, the erection of the building also means;

"Newly to erect a building or to re-erect any building by demolishing the existing building entirely; or any building by removing the roof of the existing ground floor structure and adding one or more upper floors; or to convert into more than one dwelling-house a building originally constructed as one dwelling-house only; and a dwelling so erected, re-erected or converted is called in this Chapter "a new building".

52. Here in the case, no such permission is, admittedly, obtained. No such information of the intention to erect the building, in the requisite proforma is, admittedly, given and, therefore, there being no compliance of the provisions under Section 337 or even of Section 342 of the MMC Act, which contemplates notice to be given to the Commissioner of intention to make additions to the existing structure or to change the user thereof, being made in the instant case, after giving opportunity of hearing to the Appellants and on considering all the documents produced by them, a reasoned and speaking order is passed by the Designated Officer for pulling down the suit structures. Sub-section (2) of Section 351 of the MMC Act clearly authorizes the Designated Officer to pass such order, if the person, to whom the notice is issued, failed to show sufficient cause to the satisfaction of the Commissioner as to why such work shall not be removed, altered or pulled down. Hence, no fault can be found in the impugned order passed by the Designated Officer under Section 351 of the MMC Act, so as to restrain the Respondent-Municipal Corporation from taking any action in pursuance thereof.

53. As regards the grievance raised by some of the Appellants that, the Respondent-Municipal Corporation has previously issued notices under Section 354-A of the MMC Act and Appellants had challenged the said notices by filing Suits in the Trial Court and those Suits came to be decreed, as rightly submitted by learned Senior Counsel for the Respondent-Municipal Corporation, the subject-matter of those Suits was the notice issued under Section 354-A of the MMC Act for stopping the unauthorized construction, which was in progress; whereas, the subject-matter of the present Suit is the notice and the order passed under Section 351 of the MMC Act, after the construction was completed. Moreover, perusal of the Judgments passed in the said Suits go to show that, in one Suit, as the requisite procedure was not followed, on the assurance of the Respondent-Municipal Corporation that due procedure will be followed, the Suit was withdrawn; whereas, in other Suits also, it was found that the requisite procedure, before issuing the notice, was not followed. Hence, the Suits were decreed. Now the Respondent-Municipal Corporation has followed the requisite procedure. Therefore, that hurdle also no more remains to challenge the validity of these notices and the order passed by the Designated Officer under Section 351 of the MMC Act.

54. As regards the authority relied upon by learned Senior Counsel for the Appellants Mr. Pande, that of *Zenit Mataplast P. Ltd. Vs. State of*

Maharashtra and Ors., 2009 (6) Bom.C.R. 93, laying down that, any action of stay should not only be fair, legitimate and above board, but should be without any affection or aversion. To say the least, here in the case, there is nothing on record to show that the action undertaken by the Respondent-Municipal Corporation is either unfair, illegitimate or it is affected by any affection or aversion. The only contention raised by learned Senior Counsel for the Appellants in this respect is that, this action is initiated at the behest of the complaint made by the owner of the land below the suit structures namely M/s. Khimji Bhagwandas Charity Trust.

55. In my considered opinion, assuming that the action was initiated at the instance of the owner of the land, or even at the instance of the letter received from the Secretary of the Hon'ble Chief Minister of the State of Maharashtra, that is not sufficient to attract the malafides or to hold the action initiated by the Respondent-Municipal Corporation as unfair. Being the Municipal Corporation and, therefore, the 'Town Planning Authority', Respondent-Municipal Corporation is duty-bound to take action against any illegal and unauthorized structure, whether it does so, *suo motu* when it comes across such an unauthorized and illegal structure or whether it does so, when moved by the owner of the land of the structure or otherwise, it is totally irrelevant. The Court has only to consider whether the due procedure, as laid down in the Statute, is

followed while taking such action. Here in the case, on that score, there cannot be any two opinions, because, whatever action is taken by the Respondent-Municipal Corporation is by following the due procedure of law. It was for the Appellants to prove the legality and validity of their structures, by producing the permission or 'Sanctioned Plans'. If the Appellants have failed to do so, then the order passed by the Designated Officer of the Respondent-Municipal Corporation cannot be called as unfair or affected by any aversion or affection.

56. Moreover, a general allegation of malafides is not sufficient, unless the persons, against whom such allegations are made, are joined in the Suit. In the present case, neither Khimji Bhagwandas Charity Trust, nor the State Government is joined as a party to the Suits, to prima facie show that, at their instance alone, the Respondent-Municipal Corporation has taken the action.

57. As to the Judgment in the case of *Indian Nut Products Vs. Union of India, 1994 SCC (4) 269*, on which learned Counsel for the Appellants Mr. Pandey has placed reliance, again there cannot be any dispute about the proposition that, satisfaction of the Authorities to the existence of the statutory conditions must be based on material / grounds and the same is open to judicial review. However, in the facts of the present case, the order passed by the Designated Officer of the Respondent-Municipal

Corporation is not only giving the reasons, but it is also a speaking order, in which each and every document produced by the Appellants is considered and has been passed within the parameters of the statutory provisions. Therefore, this Judgment also cannot be of any help to the Appellants to advance their submissions.

58. Learned Counsel for the Appellants has then relied upon the Judgment of the Single Bench of this Court in the case of *Pali Hill Tourist Hotel Pvt. Ltd. Vs. The Municipal Corporation of Greater Mumbai and Anr., [Appeal From Order No.715 of 2014, dated 6th June 2017]*, which lays down that, if the notice is proceeding on the assumption, then it cannot be a valid one. Here in the case, it is needless to state that, the notice gives the facts and the reality found as regards the suit structures and that is not disputed. Therefore, this authority is also not of any help to the Appellants.

59. Learned Senior Counsel for the Appellants has then relied upon the Judgment of this Court in the case of *Vijay Bhau Chalke Vs. The Municipal Corporation of Greater Mumbai [Civil Application (Stamp) No.24564 of 2015, dated 7th September 2015]*, to submit that, if the suit structure is in existence since prior to 1962, then it becomes tolerable. Here again there is no dispute about the said proposition. In the present case, though the assessment record is prior to the datum line, the

'Approved Plans' and 'Tikka Sheets' of the relevant period do not show the existence of the structures, which are found standing at the site at present and, therefore, this authority is also not helpful to the Appellants.

60. Learned Counsel for the Appellants Mr. Pande has then relied upon the two Judgments of this Court, in the case of *Mrs. Lilly P. Pandit Vs. Mumbai Municipal Corporation of Greater Mumbai and Ors., along with connected matters, [OOCJ Writ Petition (Lodging) No.88 of 2014, dated 16th January 2014]*, and in the case of *Masood Ahmed Siddiqui Vs. Mumbai Municipal Corporation and Ors. [Appeal From Order No.57 of 2013, dated 23rd January 2013]*, to submit that, the documents relied upon by the Appellants, including the license, should be considered by the Designated Officer and he should apply his mind to them, giving reasonable opportunity of hearing to the parties. Here in the case, at the cost of repetition, I have to state that, this condition is also fulfilled in the facts of the present case.

61. About the two other Judgments relied upon by learned Senior Counsel for the Appellants, that of *Suresh Shankar Rokade and Ors. Vs. Municipal Corporation of Greater Mumbai and Ors., MANU/MH/2028/2018*, and in the case of *Dashrath Sahadeo Khade Vs. The Municipal Corporation of Greater Mumbai, 2005 (1) Bom.C.R. 334*,

which deal with the grant of temporary injunction to maintain the status-quo, it has to be stated that, in respect of the illegal and unauthorized construction, the law is, however, different, as elaborated by the various Judgments of this Court and the Hon'ble Apex Court in plethora of its pronouncements, some of which are relied upon by learned Senior Counsel for the Respondent-Municipal Corporation.

62. In the case of *Esha Ekta Apartments Co-operative Housing Society Limited and Ors. Vs. Municipal Corporation of Mumbai and Ors., 2013(2) ALL M.R. 901 (S.C.)*, relied upon by learned counsel for the Respondent-Municipal Corporation, the Hon'ble Apex Court, after considering the relevant provisions of Sections 351 and 354-A of the MMC Act, was pleased to hold that,

> *"The Municipal Authorities cannot encourage violation of 'Sanctioned Plans' by not taking any action and Courts are also expected to refrain from exercising equitable jurisdiction for regularization of illegal or unauthorized constructions."*

63. After expressing its anguish over the mushrooming growth of the unauthorized constructions, which results into not only filthy stinck and unhealthy places, but also in the fire hazards, the Hon'ble Apex Court has in this Judgment quoted with approval its observations in the case of *Shanti Sports Club Vs. Union of India, (2009) 15 SCC 705*, as follows :-

"In the last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of illegal and unauthorized constructions and encroachments has acquired monstrous proportions and everyone has been paying heavy price for the same. Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls etc. in blatant violation of the municipal and town planning laws; master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorized constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan, etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country, which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realize that the constructions made in violation of the relevant laws, mater plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage etc. apart from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different types, asthma, allergies and even more dreaded diseases like cancer. It can only be a matter of imagination how much the Government has to spend on the treatment of such

persons and also for controlling pollution and adverse impact on the environment due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorized constructions. This Court has, from time to time, taken cognizance of buildings constructed in violation of Municipal and other laws and emphasized that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme etc. on the ground that he has spent substantial amount on construction of the buildings etc.

Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for the regulatory mechanism envisaged in the Municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans etc. have received encouragement and support from the State apparatus. As and when the Courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorized constructions, those in power have come forward to protect the wrong doers either by issuing administrative orders or enacting laws for regularization of illegal and unauthorized constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorized constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions."

64. The Hon'ble Apex Court has also in this respect relied upon its observations in the case of *Priyanka Estates International Pvt. Ltd. Vs. State of Assam, (2010) 2 SCC 27*, wherein the prayer for regularizing the illegal construction was declined by observing as follows :-

> *"It is a matter of common knowledge that illegal and unauthorized constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands, otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners, who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent, both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners, whose flats are to be demolished as compared to the builder."*

65. In the Judgment of the Hon'ble Apex Court in the case of *Deepak Kumar Mukherjee Vs. Kolkata Municipal Corporation and Others, (2013) 5 SCC 336*, relied upon by learned Senior Counsel for the Respondent-Municipal Corporation also, the Hon'ble Apex Court has emphasized that,

> *"Illegal and unauthorized constructions of buildings and other structures not only violate the Municipal Laws and the concept of planned development of the particular area, but also affect various fundamental and constitutional rights of other persons.*

The common man feels cheated when he finds that those making illegal and unauthorized constructions are supported by the people entrusted with the duty of preparing and executing master plan / development plan / zonal plan. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those, who have money power or unholy nexus with the power corridors. Therefore, there should be no judicial tolerance of illegal and unauthorized constructions by those, who treat the law to be their subservient."

66. In the case of *Seema Arshad Zaheer and Ors. Vs. Municipal Corporation of Greater Mumbai, 2006(5) Mh.L.J. 218*, the Hon'ble Apex Court has dealt with this very aspect of illegal construction and the order of demolition issued under Section 351 of the MMC Act, in the light of temporary injunction granted by the Trial Court, when there was "no material" to make out a prima facie case, which was held to be rightly vacated by this Court in its appellate jurisdiction by observing that;

"31. It is true that, in cases relating to orders for demolition of building, irreparable loss may occur if the structure is demolished even before trial, and an opportunity to establish by evidence that the structure was authorized and not illegal. In such cases, where prima facie case is made out, the balance of convenience automatically tilts in favour of the plaintiff and a temporary injunction will be issued to preserve status-quo. But, <u>where the plaintiffs do not make out a prima facie case for grant of an</u>

<u>injunction and the documents produced clearly show that the structures are unauthorized, the Court ;may not grant a temporary injunction merely on the ground of sympathy or hardship. To grant a temporary injunction, where the structure is clearly unauthorized and the final order passed by the Commissioner (of the Corporation), after considering the entire material directing demolition, is not shown to suffer from any infirmity, would be to encourage and perpetuate an illegality</u>. We may refer to the following observations of this Court in M.I. Builders (P) Ltd. Vs. Radhey Shyam Sahu, (1999) 6 SCC 464, made in a different context :

> *"This Court in numerous decisions has held that no consideration should be shown to the builder or nay other person, where construction is unauthorized. This dicta is not almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised, which encourages illegality or perpetuates an illegality. Unauthorized construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions.*

Judicial discretion wherever it is required to be exercise has to be in accordance with law and set legal principles."

32. Where the lower Court acts arbitrarily, capriciously or perversely in the exercise of its discretion, the appellate Court will interfere. Exercise of discretion by granting a temporary injunction, when there is "no material", or refusing to grant a temporary injunction by ignoring the relevant documents produced, are instances of action, which are termed as arbitrary, capricious or perverse. When we refer to acting on "no material" (similar to "no evidence"), we refer not only to cases where there is total dearth of material, but also to cases where there is no relevant material or where the material, taken as a whole, is not reasonably capable of supporting the exercise of discretion. In this case, there was "no material" to make out a prima facie case and, therefore, the High Court in its appellate jurisdiction, was justified in interfering in the matter and vacating the temporary injunction granted by the Trial Court."

[Emphasis Supplied]

67. These authoritative pronouncements of the Hon'ble Apex Court clearly meets the arguments advanced by learned Senior Counsel for the Appellants.

68. Lastly, learned Senior Counsel for the Respondent-Municipal Corporation has also relied upon the Judgment of this Court in the case of *Namdev Pandurang Panchal Vs. Mumbai Municipal Corporation of*

Greater Bombay, 2005(4) ALL M.R. 689, wherein while considering the provisions of Section 351 of the MMC Act, it was held that,

> *"When the Plaintiff had failed to prove existence of structure prior to 1977 or from 1962 and the land upon which structure stand, could neither belonged to Plaintiff, nor of BMC, therefore, BMC even had no authority to regularize the structure on somebody else's property."*

69. In such situation, therefore, it was held that, if, at the end, the prayer for regularization of the structure cannot be entertained on the Plaintiff's failure to prove the legality of the said structure, *"the Trial Court was justified in dismissing Suit and rejecting claim of Plaintiff."*

70. In the identical facts of that case, it was further held that, the notice for demolition of structure issued by the Municipal Corporation was proper, as Plaintiff had no necessary documents to show that the construction, which he had made was with the permission and on the basis of the sanctioned plan and he had further failed to prove that his structure was in existence before the datum line. He has also failed to prove his title over the property and that he has re-erected the structure with the permission of the BMC.

71. The point, therefore, to be stressed is that, on the face of it, the Appellants had failed to prove the legality and validity of the suit

structures in the form in which the suit structures are standing at present. Such illegal or unauthorized structures cannot be protected even at the interim stage. The impugned order of demolition of those suit structures passed by the Respondent-Municipal Corporation, therefore, after following the due process of law, as laid down under Section 351 of the MMC Act, cannot be called as illegal, null and void, so as to restrain the Respondent-Municipal Corporation from taking any action in pursuance thereof.

72. The Trial Court has, therefore, after considering all the legal and factual aspects, dismissed the Notices of Motions. In the limited scope of the jurisdiction of this Court in the Appeal against discretionary order passed on an application for interim injunction filed under order 39 Rule 1 and 2 of CPC, this Court cannot take any other view of the matter; especially when such view may lead to protection of the illegal and unauthorized structures, which are not only proving hazardous to the loss of the property and other serious consequences, but also to the loss of lives.

73. All these Appeals, therefore, being without merits, stand dismissed.

74. In view thereof, all the Civil Applications pending therein do not survive and the same stand disposed off as infructuous.

75. At this stage, learned Senior Counsel for the Appellants seeks extension of the order of status-quo passed in these Appeals, for a further period of eight weeks from today.

76. Learned Senior Counsel for the Respondent-Municipal Corporation strongly resists the said request on the ground that, the construction is patently illegal and it is in violation of Rule 58 of the Development Control Regulations. It is submitted that, without making any provision for the Mill workers and without leaving an inch of space for them, the construction is carried out. Change of user is also made in violation of Rule Rule-58 of the D.C. Regulations and hence, the Respondent-Municipal Corporation strongly opposes the prayer for extension of the order of status-quo.

77. In view of the dismissal of these Appeals and for the reasons stated here-in-above, I do not find that any ground is made out to extend the interim order of status-quo. Therefore, this request stands rejected. The order of ad-interim relief, granted earlier, stands vacated forthwith.

[DR. SHALINI PHANSALKAR-JOSHI, J.]