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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 591 OF 2014**

**The State Bank of India Employees ...Petitioners
(Sahishunta) Co-operative Housing
Society Ltd. & Anr.
*Versus***

The State of Maharashtra & 4 Ors. ...Respondents

Mr. Ryan Menezes, I/b. Jhangiani Narula and Associates for the
Petitioners.

Mr. Sukanta Karmakar, AGP for Respondent – State.

Mr. Rajesh Patil, for Respondent – BMC.

Mr. Amrendra Mishra, for Respondent No.4.

**CORAM: A.S. OKA &
RIYAZ I. CHAGLA, JJ.**

JUDGMENT RESERVED ON 31st July, 2018.

JUDGMENT PRONOUNCED ON 17TH SEPTEMBER, 2018

O R A L J U D G M E N T :- (Per Riyaz I. Chagla J.)

Jitendra
Shankar
Nijasure

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1. The Petitioners by the present Petition are seeking a direction against Respondent Nos. 2, 3 and 5 to carry out their statutory duties and to remove the encroachment and the unauthorised constructions carried out by the Respondent No.4 on the land belonging to Respondent No.1.

2. The Petitioner No.1 is the owner of the building situated on CTS No. 183, Hissa No.2 (Part) Rokadia Lane House, Borivali (W), Mumbai. Abutting to the boundary wall of the Petitioner No.1 building is the subject land viz. CTS No.2460 belonging to the Respondent No.1. It is the Petitioners case that a group of persons formed the Rokadia Land Welfare Association which is the Respondent No.4 herein. Initially, Respondent No.4 was using a small part of the subject land for celebrating Ganpati Pooja celebrations. It is claimed that Respondent No.4 has encroached into the open land and constructed a temporary structure by using the wall of the Petitioners building as a support. The Petitioner No.1 is aggrieved by the structure as it is causing a nuisance to the members of the Petitioner No.1 as well as obstructing light and ventilation to the occupants of the Petitioner No.1 building. It is claimed that the Respondent No.4 has used steel frames to erect a shed on the subject land and the shed constructed is interfering with the drainage line to the Petitioner No.1 building which passes under the same and the water line to the Petitioner No.1 building which also pass through the impugned structure.

3. The Petitioner has preferred a complaint before Respondent Nos. 1 and 2 pointing out their grievance with regard to the

impugned structure. It is also pointed out by the Petitioners that they had addressed a communication on 26th November, 2012 to the Respondent No.3, pointing out their grievances. During the inspection carried out by the officers of the Municipal Corporation of Greater Mumbai (for short “the Municipal Corporation”) as well as MHADA authority, it had been observed that foundation of the unauthorised structure are such that provision had been made for a multi-storeyed building. The Petitioners had sought immediate steps to be taken to stop the work which had been carried out on the subject land. The Petitioners had also moved an application under Right to Information Act, 2005 to find out whether permission had been granted to Respondent No.4 to build on subject land and / or any approval had been granted. Pursuant to the application, Respondent No.3 on 15th January, 2013 confirmed that they had not given permission for the work being carried on the subject land. The Petitioners by their communication dated 11th February, 2013 addressed to Respondent No.3 sought the demolition of the existing structure in view of confirmation that permission had not been granted to Respondent No.4. Further communications were addressed by the Petitioners to the Respondent No.2 and the Vigilance Officer of the Municipal Corporation, setting out all the grievances of the

Petitioners. However, there was no action taken against the impugned structure. On 24th September, 2013, the Respondent No.2 informed the Petitioners that the unauthorised structure was carried out by utilizing the MLA fund of Hemendra Mehta. The Petitioners addressed a letter dated 6th January, 2014 to Respondent No.2 stating that the authorities were abetting the illegality of the structure instead of taking action to demolish the unauthorised structure. The Petitioners being aggrieved by inaction on the part of the Respondent Nos. 1 to 3 and 5 have filed this Petition.

4. Considering the narrow controversy in this Petition, this Petition has been taken up for final hearing.

5. This Court vide an order dated 21st June, 2017 had directed the appropriate officer nominated by the Respondent No.2 as well as the designated officer of the concerned ward of the Municipal Corporation to make a joint visit to the concerned site with a view to ascertain whether any illegal construction as alleged by the Petitioner is carried out on the government land which is the subject matter of this Petition. A joint inspection had been carried out by the designated officer of the concerned ward

and the officer nominated by the Deputy Collector (Encroachment) which is recorded in the order of this Court dated 28th February, 2018. A compilation was tendered on record by the learned Counsel appearing for the Mumbai Municipal Corporation which has been taken on record and marked 'X-1' for identification. It was noted in the report signed by the Municipal officers as well as officers of the State after carrying out joint inspection on 11th July, 2017 that the area occupied by the impugned structure bears the name board of the Respondent No.4 admeasuring 1080 Sq.ft. On the front portion of the structure there was a board displaying that the same had been erected by using the funds of Shri Vinod Ghosalkar, a Member of the Legislative Assembly. From the documents annexed to the report, it appears that on 30th July, 2012, Mumbai Slum Improvement Board which is a unit of MHADA, addressed a letter to the Assistant Municipal Commissioner of the Municipal Corporation stating that Shri Ghosalkar had proposed construction of a social welfare centre and no objection certificate dated 24th December, 2013 issued by the District Collector has been annexed. The no objection certificate recorded that it will be first verified whether the proposed user is lawful. The no objection certificate was for constructing a cultural centre. Further, it records that no objection

certificate was being issued for carrying out construction of maximum area of 300 sq. ft. A condition has been incorporated that it shall ensure that no interest is created in favour of any individual or private organisation. It was only after compliance with the conditions, the construction would be commenced. It has been recorded in the said order of this Court that construction made by using the funds of the MLA ought to have been restricted to 300 Sq.ft. There is construction of a larger area comprising ground plus upper floor. It is recorded that that officers at the time of joint visit had not measured area of the upper floor. A report has been signed by the Tahasildar in the office of Deputy Collector (Encroachment) as well as Municipal Officers. A direction was issued to the Petitioners to join Shri Ghosalkar as party Respondent No.6 by carrying out amendments to the cause title as well as consequential amendments. The Municipal Corporation was directed to initiate appropriate action for demolition of the illegal structure by following due process of law. The Corporation was also to ascertain whether its permission for construction was necessary and if found that the direction is mandatory and not taken, the entire structure was to be demolished. By a further order dated 12th June, 2018, this Court has recorded the statement of the learned counsel appearing for the Respondent

No.4 on instructions of one Shri Jayesh Vrujlal Chauhan, Joint Secretary of Respondent No.4 that the said Respondent by demolishing excess construction will reduce the existing structure, subject matter of this Writ Petition to the size of 300 Sq. ft. within a period of 15 days from the date of the order. The statement was accordingly accepted. A direction was issued to the Respondent No.4 to produce documents in support of their solemn statement made in Affidavit of Shri Chauhan that the Collector had granted an area of 300 Sq. ft of land to the Respondent No.4. Further, the Designated Officer of the Municipal Corporation was directed to ensure that the appropriate officer visited the site on 27th June, 2008 and measure the area of the structure after its demolition. Thereafter an Affidavit-cum-Undertakings has been filed by Shri Jayesh Vrujlal Chauhan, Joint Secretary of the Respondent No.4 affirmed on 29th June, 2018 which is taken on record and marked 'U-1' for identification. On 13th July, 2018, this Court has recorded the statement of learned counsel appearing for the Respondent No.4 that in terms of the undertaking accepted by this Court by order dated 29th June, 2018, compliance had been made by reducing the size of the structure to 300 Sq. ft. A letter had been tendered across the bar dated 10th July, 2018 which is addressed to the Designated Officer along with the photographs. Thereafter,

the Municipal Officers visited the site as directed by this Court and confirmed that the size of the structure had in fact been reduced to 300 Sq.ft.

6. We refer to the Affidavit filed by the Respondent No.4 through Jayesh Chauhan, Joint Secretary of the Respondent No.4 dated 12th June, 2018 wherein he has stated in paragraph 6 that the Collector granted an area of 300 Sq. ft of land to the Respondent No.4. There is another Affidavit of Shri Jayesh Chauhan on behalf of Respondent No.4 dated 27th June, 2018 wherein he has withdrawn the statement made in paragraph 6 of his prior Affidavit and has stated that the disputed structure was given to the Respondent No.4 on caretaker basis by the Mumbai Slum Improvement Board. He has stated that the disputed structure is constructed by MHADA with due permission from the officer of District Collector and that the same has not been constructed by the Respondent No.4. He has, therefore, stated that the both the sheds admeasuring 1080 sq. ft constructed in the year 2004 and the disputed shed admeasuring 300 Sq.ft constructed in the year 2014 were in the domain of the concerned MLA and constructed by MHADA with the due approval of and NOC issued by the Collector. He has referred to correspondence

entered into between the Respondent No.4 and the concerned MLA for constructing welfare centre for the benefit of the people of the said locality as well as the permission granted by the Collector for constructing the disputed structure. He has stated that the structures are legally authorised structures and cannot be termed as illegal and liable to be demolished.

7. There is an Affidavit of Shri Padmakar Ganpati Chavan dated 31st March, 2018 on behalf of the Respondent No.3 wherein he has referred to a prior notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 issued to the owner / occupier of Respondent No.4 – Association in compliance with the orders of this Court.

8. We have heard the learned counsel appearing for the Petitioners as well as the learned counsel appearing for the Respondent No.4 – Association, the learned AGP for the Respondent – State and the learned counsel for the Respondent Nos. 3 and 5 of the Municipal Corporation. It is an accepted position that the excess illegal construction over and above 300 sq.ft. has been removed by the Respondent No.4 pursuant to the aforementioned orders of this Court. It appears from the

documents on record that possession of the structure of 300 Sq.ft. had been given to the Respondent No.4 – Association on a caretaker basis by the Mumbai Slum Improvement Board. There is a caretaker agreement which has been annexed to the Affidavit of Shri Jayesh Chauhan dated 27th June, 2018. From the agreement, it is apparent that the structure of 300 Sq. ft had been given on caretaker basis to the Respondent No.4 – Association on 2nd June, 2014 for a period of five years. The structure has been constructed by MHADA in 2014 and apparently with concerned MLA funds as borne out from the documents on record.

9. The Petitioners are seeking by this Petition, action of demolition of the unauthorised construction which they claim had been carried out by Respondent No.4 on the subject land belonging to Respondent No.1. We find from the record that the construction of the structure of 300 Sq.ft. had not been carried out by the Respondent No.4 and in fact was carried out by MHADA with the funds of the concerned MLA. There is a letter on record dated 3rd April, 2012 wherein the Mumbai Slum Improvement Board consented to construction of the Samaj Kalyan Kendra on the subject plot with an estimated cost of Rs.15 lakhs. The Mumbai Slum Improvement Board by a letter dated 18th March,

2013 informed the Collector that they were constructing 300 Sq.ft. Samaj Kalyan Kendra on the said site with the MLA fund and called upon the Collector to give no objection certificate. The office of the Collector has granted no objection certificate vide letter dated 3rd October, 2013 for construction of the 300 Sq. ft on the said site as the Samaj Kalyan Kendra for general public use and by a letter dated 5th October, 2013, the conditions were modified. MHADA has confirmed having constructed the structures with no objection from the concerned authorities in its letter to the Municipal Corporation dated 19th June, 2018.

10. Accordingly, from the documents on record, it is apparent that the 300 Sq. ft. disputed structure i.e. Samaj Kalyan Kendra is constructed by MHADA as per approval of the concerned authorities. The unauthorised structure which was in excess of 300 Sq.ft. has been removed by the Respondent No.4 and this has been confirmed by the Designated Officer of the MMC. Hence, there is no unauthorised structure which requires removal for which this Petition has been filed.

11. We dispose of this Petition by directing the Respondent No.4 to handover the 'Samaj Kalyan Kendra' structure of 300 sq.

ft. to the Mumbai Slum Improvement Board, (W) Division, Mumbai (a unit of MHADA) upon the expiry of five years from 2nd June, 2014 as agreed in the caretaker agreement. There shall be no order as to costs.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J.)