

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

WRIT PETITION (L) NO. 696 OF 2018

Shatrunjay Giriraj Co-operative Housing
Society Ltd. and another.

... Petitioners.

V/s.

The Municipal Corporation of Greater
Mumbai and others.

... Respondents.

Mr.G.V.Murthy with Mr.Chevin Lapashiya i/b. Niranjan & Co.
for the petitioner.

Mr.A.Y.Sakhare, Senior Advocate with Ms.K.H.Mastakar
for the respondent- MMC.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 6th June 2018.

PC.:

Heard the learned counsel for the petitioners and the learned senior counsel appearing for the respondents. On 18th February 2016, the first respondent- Municipal Corporation issued a notice under sub-section (1) of section 53 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act") to the petitioners setting out the alleged additions and alterations carried out by the petitioners which are set out in the schedule. The petitioners were called upon to remove the same.

2. The petitioners replied to the said notice by a letter dated 22nd February 2016. In the said reply, it is contended that no unauthorized work has been carried out by the petitioners. Reliance was

placed on the approved plans, the copies of which are attached to the said reply. Even to this petition, copies of the sanctioned plans have been annexed. As the notice dated 18th February 2016 is not complied with, the impugned notice in exercise of powers under clause (b) of sub-section (6) of section 53 of the MRTP Act was issued by the first respondent on 22nd February 2018.

3. The challenge in this petition under Article 226 of the Constitution of India is to the notices dated 18th February 2016 and 22nd February 2018. The main submission of the learned counsel appearing for the petitioners is that the alleged offending additions and alterations mentioned in the first notice are not at all unauthorized and, in fact, the construction of lift room, water tank and entrance doors to the terraces of “A”, “B” and “C” Wings are as per the sanctioned plans. He has placed reliance on the sanctioned plans annexed to the petition. He submits that though the sanctioned plans were produced along with the reply to the notice, the same were not considered by the Corporation.

4. It is true that if the petitioners were aggrieved by the notice dated 18th February 2016, they ought to have challenged the same in accordance with law. As the notice was not challenged, the consequential action under clause (b) of sub-section (6) of section 53 of the MRTP Act was initiated by the first respondent.

5. However, in the facts of the case, we find that the petitioners are relying upon the alleged sanctioned plans the copies of which have been annexed to the petition and to the reply of the petitioners dated 22nd

February 2016. The learned senior counsel appearing for the respondents submits that if the Court directs, the respondents will consider the documents produced by the petitioners and will thereafter decide whether action under clause (b) of sub-section (6) of section 53 of the MRTP Act deserves to be taken on the basis of notice dated 18th February 2018.

6. Ultimately, the respondents will have to examine the sanctioned plans and the documents relied upon by the petitioners with a view to ascertain whether there is any unauthorized work as mentioned in the first notice dated 18th February 2016. Therefore, we dispose of the petition by passing the following order:

- (i) We direct the designated officer of the concerned ward of the Municipal Corporation or any other officer authorized by him to look into the documents produced by the petitioners along with petition as well as along with the reply dated 22nd February 2016;
- (ii) After considering the said documents, the designated officer or the officer nominated by him will decide whether an action under clause (b) of sub-section (6) of section 53 deserves to be initiated against the petitioners. This exercise shall be completed within a period of two months from today;
- (iii) We direct that in view of the aforesaid order, the second impugned notice dated 22nd February 2018 shall not be acted upon. However, it will be open for the respondents to issue a fresh notice under clause (b) of sub-section (6) of section 53 of

the MRTP Act after examining the documents as aforesaid within the time specified by this Court;

- (iv) If such a fresh notice under clause (b) of sub-section (6) of section 53 is issued, the same shall not be acted upon for a period of two weeks from the date on which it is served upon the petitioners;
- (v) We make it clear that we have made no adjudication on the merits of the controversy;
- (vi) Needless to add that without issuing a fresh notice under clause (b) of sub-section (6) of section 53, the impugned notice dated 18th February 2016 shall not be acted upon;
- (vii) The petition is disposed of on the above terms.

(RIYAZ I. CHAGLA, J.)

(A.S.OKA, J.)