

Sharayu Khot.

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

**WRIT PETITION NO. 1729 OF 2015
WITH
CHAMBER SUMMONS NO. 61 OF 2016
IN
WRIT PETITION NO. 1729 OF 2015**

Natwarlal Tulsidas Mehta & Anr. ...Petitioners

Versus

**Municipal Corporation of Greater ...Respondents
Mumbai & Ors.**

Mr. Vijay M. Waghela, for the Petitioners.

Ms. Shital Mane, for the Respondent-MCGM.

Mr. Suyash Gadre, a/w Mr. Chetan Mhatre, i/by Utangale & Co.,
for the Respondent No. 4.

Mr. Shailesh Shah, Senior Counsel, a/w Mr. Banerji & Mr. Abbas
Zaidy, i/by Zohair & Co., for the Respondents No. 5 to 13.

Mr. Bipin J. Joshi, for the Respondent No. 25.

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

DATE : 5 June 2018

ORDER :

1. Heard the learned Counsel appearing for the Petitioners and the learned Counsel representing the concerned Respondents.

2. The subject matter of this Petition is the property more particularly described in the Petition which according to the case of the Petitioners vests in a public charitable trust duly registered under the Maharashtra Public Trusts Act, 1950 (for short "*the said Act of 1950*"). On an Application made by the Trustees of the said Trust under Section 36 of the said Act of 1950, a permission was granted by the learned Joint Charity Commissioner to sell and dispose of the property.

3. On the basis of the permission granted under Section

36 of the said Act of 1950, an Application was made for grant of development permission. The development permission was granted. It appears that the construction of building consisting of ground plus 15 floors was commenced. On 16 August 2013, the Respondent No. 25 was served with the notice under Sub-Section 1 of Section 53 of the Maharashtra Regional and Town Planning Act, 1966 (for short "*the MRTP Act*"). By the said notice, the Respondent No. 25 was called upon to restore the residential premises to its original position upto the stilt slab in accordance with commencement certificates approved by the Executive Engineer on 7 April 2011. It was observed by the notice that the construction of RCC slab from 1st to 15th floors was in contravention of the approved plans. Construction of RCC staircase and lift shafts was also in contravention of the sanctioned plans. Construction of certain columns was made without maintaining open space as required by the sanctioned plan. A copy of the said notice is annexed to the Reply filed by the Municipal Corporation to this Petition.

4. The Respondent No. 25 filed the L.C. Suit No. 102737 of 2017 in the City Civil Court at Mumbai *inter alia* for challenging the notices issued by the Municipal Corporation including the notice dated 16 August 2013. As noted in the earlier orders of this Court, an *ad-interim* relief was granted by the City Civil Court in the said Suit. On 4 May 2018, on the prayer made by the Respondent No. 25, the Suit was withdrawn without grant of any liberty. It is not the case of the Respondent No. 25 that he has challenged the notices subject matter of the Suit by filing any other proceedings. It appears that the Respondent No. 25 made an Application for regularization dated 29 November 2017. Today, the learned Counsel appearing for the Respondent No. 25 has tendered two compilations. In the smaller compilation running into 27 pages, on page 20 is a copy of the order issued by the Slum Rehabilitation Authority on 7 February 2018 addressed to the developer which refers to action initiated by the Municipal Corporation under the provisions of the MRTP Act. The communication dated 7 February 2018 specifically records that the request for

regularizations made by the developer was rejected. The developer was instructed to first get the MRTTP action withdrawn from the Municipal Corporation and the developer was directed to himself demolish all the illegal/unauthorised construction on the site. Against the said order dated 7 February 2018, the Respondent No. 25 filed Writ Petition (L) No. 498 of 2018. By the order dated 14 March 2018, the Respondent No. 25 was permitted to withdraw the said Petition. The said order reads thus:-

“ After arguing for sometime learned Counsel for the petitioner seeks leave to withdraw this petition with liberty to the petitioner to file fresh petition after taking appropriate steps in regard to the removal of unauthorized construction.

2. With the aforesaid liberty the petition is allowed to be withdrawn and is disposed of as such.”

5. The said order was corrected by order dated 12 April 2018 which reads thus:-

“ Parties through their Counsel.

2. Speaking to the Minutes.

3. In the order dated 14th March, 2018 at the end of the first paragraph i.e. after the words “unauthorized construction” it be added as “beyond permissible FSI”.

4. Order stands modified to the aforesaid extent.”

6. Thereafter, the Respondent No. 25 has not filed any other Petition as per the liberty granted under order dated 14 March 2018.

7. Page 24 of the said compilation is a document in the

form of a note which is signed by the various officers of the Slum Rehabilitation Authority. The said note deals with the said Application for regularization dated 29 November 2017 submitted by the developer-M/s. Shreenath Corporation. The note specifically records that the unauthorised work comprises of stilt plus four level podium plus 5th to 14th upper floors. It records that on 21 September 2017, a direction was issued by the Hon'ble Minister of Housing Department directing the Executive Engineer to submit a report to the Chief Executive Officer of the Slum Rehabilitation Authority. It is on the basis of the said directions that the report which is on page 24 has been submitted. The report records that the construction of composite building consisting of ground plus 14 floors is carried out by a developer without approval of the Municipal Corporation. The said report seeks directions of the Chief Executive Officer on the issue whether to accede to request of the developer to regularize the construction. As of today, the construction has not been regularized. Going by the compilation produced by the Respondent No. 25, as per the order dated 7 February 2018, the

developer will have to demolish the entire illegal/unauthorised floors constructed on the site. In fact, by the communication dated 7 February 2018, the Application for regularization made by the developer has been rejected. Apart from the fact that the note on page 24 of the compilation is prepared in December, 2017 only on the basis of the directions issued by the Hon'ble Minister of Housing Department, the said note has no relevance at all. Subsequently, by a communication dated 7 February 2018, the Application for regularization made by the developer has been rejected by giving a direction to the developer to demolition all the illegal/authorised floors constructed on the site.

8. In view of the unconditional withdrawal of the aforesaid suit by the Respondent No. 25, the notice dated 16 August 2013 under Sub-Section 1 of Section 53 of the MRTP Act has attained finality, which requires the Respondent No. 25/developer-M/s. Shreenath Corporation to demolish the illegal work has become final.

9. There is a prayer made in terms of prayer clause (f) directing the Mumbai Municipal Corporation to demolish the 14th floor. Perhaps an action of demolition could not taken by the Municipal Corporation, as *ad-interim* order passed by the City Civil Court in the suit filed by the Respondent No. 25 was operative till 4 May 2018. The said order came to an end as a result of the withdrawal of the suit on 4 May 2018. Today, there is no impediment in the way of the Municipal Corporation implementing the notice dated 16 August 2013.

10. The first substantive prayer in this Petition is the prayer clause (c), which is only a prayer calling for record and proceedings from the Municipal Corporation and the Slum Rehabilitation Authority. As far as the prayer clause (d) is concerned, it concerns the First Information Report. Such a prayer cannot be made in a civil Writ Petition. The prayer clause (e) is for appointment of the Court Receiver. This prayer cannot be entertained at the instance of the Petitioners. Prayer clause (f), as stated earlier, is for directing the Municipal Corporation

to demolish the building consisting of 1st to 14th floor. The tenants in the property have raised objection to the locus of the Petitioners. Considering the fact that the notice 16 August 2013 is operative and the challenge to the said notice by the Respondent No. 25 has been unconditionally withdrawn and considering the fact that the proposal for regularization submitted to the Slum Rehabilitation Authority has been rejected on 7 February 2018, there is no impediment in the way of acting upon the notice dated 16 August 2013. Hence, it is not necessary to entertain this Writ Petition.

11. The learned Senior Counsel appearing for the tenants made a grievance that the tenants cannot be deprived of permanent accommodation to which they are entitled to. We are not concerned with the said issue in this Writ Petition, as the tenants will have to proceed against the persons who are under an obligation to provide them the alternate accommodation.

12. Therefore, subject to what is held above and

what is observed above, it is not necessary to entertain this
Petition and the same is accordingly disposed of.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]