

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.104 OF 2014

Atul Ambalal Barot and Ors.	..Petitioners
vs.	
Mumbai Municipal Corporation of Greater Mumbai	...Respondent

Mr. M. M. Vashi, Senior counsel and Ms. Aparna Devkar i/b M.P.Vashi & Associates for the Petitioners.
Ms. Shilpa Gajre-Dhumal for the Respondent-BMC.
Mr. Sandesh Patil and Mr. Amogh Singh i/b Mr. A.S.Singh for the Respondent No.7.

CORAM : A.S. OKA & P. N. DESHMUKH, JJ.

DATE : 23rd FEBRUARY, 2018

P.C.:

. Heard the learned senior counsel for the Petitioners and the learned counsel for the Respondent Nos.1 to 3. The substantive prayer in this petition under Article 226 of the Constitution of India is for issuing a writ of mandamus directing the Respondent No.1 to demolish the unauthorized work of amalgamations carried out by the Respondents named therein. The only other substantive prayer is the prayer clauses (b). The learned senior counsel for the Petitioners on instructions states that the Petitioners are not pressing prayer clause (b). We accept the statement.

2. There is an affidavit in reply filed on behalf of the Municipal Corporation of Shri Sudhakar Ramkrishna Mahajan, Assistant Engineer, Building Proposal, P ward. In clause (f) of paragraph No.3, it is accepted that there is an unauthorized construction of the mezzanine floors in several units from ground floor to 5th floor and 6th floor (part). In fact clause (f) states that unless the said unauthorized work is removed, occupation certificate of the entire building cannot be granted.

3. Strangely, in paragraph 5, the stand taken by the Municipal Officer is that the Petitioners are responsible for removal of the unauthorized work. The other grievance made is that the Petitioners have allowed third parties to enter the premises in the building in respect of which occupation certificate was not granted. There is a merit in the said grievance as it found as a matter of fact that several parties are in possession of the premises in respect of which there is no occupation certificate. Though the contention of the Petitioners is that the purchasers occupied the said tenements without their consent, the said contention cannot be accepted for the simple reason that if that was really true, the petitioners would have proceeded against them for illegally occupying the premises. In any event, prayer clause (b) is not pressed. We need not go into this aspect.

4. The fact remains that even the Municipal Corporation has accepted that illegal and unauthorized work has been carried out. In fact Exh.B is the notice issued on 29th December 2012 under section 354(A) of the Mumbai Municipal Corporation Act, 1988 (for short, “the MMC Act”) which alleges unauthorized construction of mezzanine floors in several units from ground floor to 6th floor (part). It also alleged that there was unauthorized amalgamation of units at various places in the building under reference. It will be also necessary to refer to a letter dated 1st March 2014 issued by the Designated Officer, Assistant Engineer, P/South Ward in which it is stated that due process of law has already been followed by issuing a notice under section 354(A) of the MMC Act. It is further stated that the unauthorized constructions will be demolished on availability of police force.

5. The stand taken by the Municipal Corporation in the affidavit

of Shri Sudhakar Ramkrishna Mahajan as regards illegal constructions, to say the least, is shocking. After having claimed that due process has been followed and orders would be passed shortly and thereafter demolition will be undertaken, now a strange stand has been taken in the affidavit that it is the responsibility of the Petitioners to remove the unauthorized work. The Respondent No.1 Municipal Corporation is vested with sufficient powers under the MMC Act, as well as under the Maharashtra Regional and Town Planning Act, 1966 to take action of removal of illegal constructions. When the law has vested the powers in the Municipal Corporation to take action against the unauthorized constructions, there is a corresponding duty vested in the Municipal Corporation to take such action.

6. Again, if the Petitioners have committed any illegality by inducing third parties without obtaining the occupation certificate or if the Petitioners are themselves responsible for the illegal constructions, the Respondent No.1 can always take appropriate action against them in accordance with law.

7. Hence, we pass the following order:

ORDER

- i) We direct the Respondent No.1 to take further steps for implementing removal/demolition of structures mentioned in Exhibit B to the Petition. However, the said notice is addressed to the Petitioner Nos.1 and 3. Hence we direct that before taking the action of demolition/removal of illegal constructions, the Respondent No.1 shall follow due process of law by issuing a notice under appropriate provision of law to the occupants of the premises in which the unauthorized constructions/illegal work has been carried out;
- ii) We make it clear that the action of removal/demolition shall

be taken only after giving an opportunity of being heard to those who will be directly affected by the demolition;

iii) In terms of the above directions, the petition is disposed of.

(P.N. DESHMUKH, J)

(A.S. OKA, J.)