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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.3845 OF 2018

M/s. Shaad Reality

..Petitioner.

V/s.

The Municipal Corporation for
Greater Mumbai & Ors.

..Respondents.

Mr.Cyrus Ardeshir with Mr.Akhil Kupade I/b Narayanswani
Jayaraman for the Petitioner.

Mrs.Manisha Jagtap for the Respondent Nos.3 & 4.

Mr.Amit Shastri, AGP for the Respondent No.5.

***CORAM: R.M.SAVANT AND
N.J. JAMADAR, JJ.***

DATE : NOVEMBER 28, 2018

P.C.:-

The above Writ Petition has been filed challenging the Notice dated October 6, 2018 issued under Section 53(1) of the Maharashtra Regional Town Planning Act, 1966 ('the MRTPA Act' for short). The Petitioner also seeks a direction that the Respondent Nos.3 and 4 be directed to expeditiously scrutinize and decide the amalgamation proposal dated July 8, 2017 submitted by the Petitioner and accordingly grant No Objection

Certificate (NOC) as well as Letter of Intent (LOI) for redevelopment of the two adjoining plots of land bearing City Survey Nos.686 and 687 of Mazgaon Division, E.S. Patanwala Marg, Byculla (East), Mazgoan, Mumbai.

2. It is not necessary to burden this order with unnecessary details having regard to the nature of the directions to be issued. Suffice it would be to state that the Petitioner has undertaken re-development project of the property comprising the plot No.686 under Regulation 33(7) of the Development Control Regulations ('DCR').

3. It is alleged in the impugned Notice dated October 6, 2018 that the Petitioner has unauthorizedly constructed two floors above Floor No.21 in the building which is being constructed under the said Re-development Scheme. The Notice on the backside refers to a sketch in which the dimensions of the alleged unauthorized construction has been shown. On receipt of the said Notice, the Petitioner *vide* its application dated November 16, 2018 filed a representation against the said Notice, as also applied for regularization. In so far as section 53 of the MRTP Act is

concerned, the same can be said to be a self contained code. As against a Notice issued under section 53(1) of the MRTP Act, a representation can be made under section 53(3) of the MRTP Act and on such representation being made, the same operates as a stay against demolition till such time the said representation is considered. It is an undisputed position that the said representation dated November 16, 2018 is as yet pending. It appears that the Petitioner prior to issuance of Notice dated October 6, 2018 i.e. in the year 2017 more particularly on July 8, 2017 had applied to the Mumbai Building Repairs and Reconstruction Board ('MBRRB' for short) for amalgamation of the plots bearing City Survey No.686 on which the building in question is being put up and plot bearing City Survey No.687 which is adjoining the plot, the application for amalgamation of the said two plots is also pending.

4. The learned counsel appearing on behalf of the Petitioner Mr.Cyrus Ardeshir would submit that the said application for amalgamation dated July 8, 2017 filed by the Petitioner before the Municipal Corporation of Greater Mumbai

('MCGM' for short) be directed to be decided within a particular time frame as, according to the learned counsel, the same would have a bearing on the Petitioner's application for regularization. It was also submitted by the learned counsel that in terms of the amended D.C. Rules, only a small portion of the alleged unauthorized construction cannot be regularized as otherwise. In terms of the amended DCR, a substantial portion of the built-up area of the alleged unauthorized construction can be regularized according to him. It was, therefore, the submission of the learned counsel that the application for regularization may also be directed to be disposed of by the MCGM within a particular time frame, after the application for amalgamation of the plot is decided by the MBRRB.

5. We had deferred the hearing of the above Writ Petition on the earlier occasion so as to enable the learned counsel appearing for the Respondent Nos.3 and 4, Mrs.Jagtap, to obtain instructions as regards the disposal of the application for amalgamation dated July 8, 2017. Today, the learned counsel Mrs.Jagtap would submit that the MBRRB would dispose of the said application for amalgamation within the time frame that

would be stipulated by this Court.

6. In our view, in the facts afore-stated, it would just and proper to issue the following directions :-

- i) The MBRRB is directed to decide the Petitioner's application dated July 8, 2017 for amalgamation of plots bearing City Survey Nos.686 and 687 situated at Mazgaon Division, E.S.Patanwala Marg, Byculla (East), Mazgoan, Mumbai within a period of 8 weeks from today i.e. on or before January 23, 2019;
- ii) The Mumbai Corporation for Greater Mumbai (MCGM) i.e. Respondent No.1 would decide the Petitioner's representation dated November 16, 2018 within a period of six weeks after the MBRRB decides the application for amalgamation of the plots;
- iii) Since we are informed that the building is presently under construction, the Petitioner will not precipitate the matter by way of completing the construction in respect of the two floors above the 21st floor as also

hand over the possession of the said two floors to third parties, unless the construction of the two floors above 21st floor is regularized;

- iii) The learned counsel appearing on behalf of the Petitioner, Mr.Ardheshir, on instructions from Mr.Usman Qureshi, who is the brother of the Proprietor and whom he represents in the proceedings, gives an undertaking to the said effect. The same is accordingly accepted;
- iv) In the event the MCGM rejects the application for regularization, the same may not be given effect to for a period of two weeks of the communication of the said order, so as to facilitate the Petitioner to take appropriate recourse against the said order;
- v) With the directions as aforesaid, the Writ Petition is disposed of.

(N.J. JAMADAR, J.)

(R.M.SAVANT, J.)