

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

WRIT PETITION (LODGING) NO.4106 OF 2018

Versus

The Municipal Corporation for Greater
Mumbai, Through Municipal Commissioner and Ors. ...Respondents

Mr.Cyrus Ardeshir a/w Mr.Akhil Kupade i/b Manoj Harit and Company, for the Petitioner.

Ms.Madhavi Tavanandi a/w Ms.Rupali Adhate, for the Respondent –
M.C.G.M.

Mr.Amit Shastri, A.G.P. for the Respondent – State.

Mr.Amol Kadgaokar, Jr. Engineer (B&F), E Ward.

***CORAM : RANJIT MORE &
REVATI MOHITE DERE, JJ.***

DATE : 11th DECEMBER, 2018

P.C. :

1. Heard.
2. The Petitioner, by this Petition, is challenging the notice under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 (M.R.T.P. Act).

3. By the said notice, the Petitioner is directed to demolish the 8 Nos. of Flats on 1st Floor to 5th Floor Parking and 22nd Floor to 24th Floor beyond CC issued by Building Proposal Department and 3 Nos. of Flats in Part Refugee Floor on 8th Floor, 13th Floor and 18th Floor situated at Aafiya Heights, Dimtimkar Road, Nagpada, Mumbai.

4. By the very said notice, liberty was granted to the Petitioner to apply under Section 44 of the M.R.T.P. Act, for retention of the work before the Competent Authority i.e. Executive Engineer (Building Proposal) City of M.C.G.M., within one month from receipt of the notice.

5. Learned Counsel for the Petitioner fairly conceded that the Petitioner has commencement certificate upto 21st Floor only. Learned counsel for the Petitioner, having taken instructions from his client, who is present in Court, also states that the Flats in Part Refugee area i.e. on 8th Floor, 13th Floor and 18th Floor, would be demolished. He, however, states that the construction on 22nd to 24th Floor can be regularized.

6. Learned Counsel for the Petitioner submitted that the

impugned notice is dated 4th July, 2018, however, the Petitioner got knowledge of the said notice, only in the first week of December 2018 and thereafter rushed to this Court. He submitted that in the circumstances, the Petitioner may be granted liberty to file an application for regularization and till the decision on this application, status-quo may be directed to be maintained.

7. Learned Counsel for the M.C.G.M has produced the original copy of the notice under Section 53(1) of M.R.T.P. Act along with the acknowledgment thereon. The notice shows that it was addressed to the 1) Developer, M/s.Aafiya Realtors 2)Architect, M/s.Gajjar & Associates and 3)Architect, M/s.Design Group & Associates. It appears that on behalf of the Developer, the notice is received by somebody on 17th July, 2018 and that Architect, M/s.Gajjar & Associates have acknowledged the notice on 17th July, 2018.

8. Learned Counsel for the Petitioner submitted that Architect, M/s.Gajjar & Associates have resigned as Architect of the Petitioner, about 2 ½ years ago and that the current Architect is M/s.Design Group &

Associates. Admittedly, notice was not given to the current Architect M/s.Design Group & Associates. So far as the acknowledgement of the notice on behalf of the Developer, received by somebody on 17th July, 2018 is concerned, learned counsel for the Petitioner submitted that he cannot identify the person, who has acknowledged the notice. He, however, maintains that the Petitioner got knowledge of the notice, only in the first week of December, 2018. The learned counsel for the Petitioner's contention is supported by the pleadings in the Petition.

9. In the above facts and circumstances, though the impugned notice was issued on 4th July, 2018, we are inclined to grant liberty to the Petitioner to make an application for regularization of the notice structure, excluding the construction of the flats on the Part Refugee Floor.

10. In the light of the above, the Petition is disposed of by passing the following order:-

- a) The Petitioner is at liberty to file an on-line application, for regularization of the notice structure, through licensed Architect, except the structures on Part Refugee Floor, within a

period of two weeks from today;

- b) If the proposal/representation is not filed within the stipulated period of two weeks, the Corporation would be at liberty to demolish the notice structure immediately, without giving further notice;
- c) In the event, such a proposal/representation is filed within the stipulated period by the Petitioner, the Corporation/Competent Authority shall consider the same, on its own merits and in accordance with law, within a period of eight weeks from the date of receipt of the proposal/representation;
- d) In the event, the notice structure is not regularized by the Corporation/Public Designated Officer, the Petitioner shall demolish the same, within a period of four weeks, subject to the Petitioner's right to challenge the rejection of the regularization application by filing an Appeal under Section 47 of the M.R.T.P. Act;
- e) Both the parties shall maintain status-quo regarding the notice structure, till the decision on the regularization application by the Corporation/Competent Authority.

11. The Petition is accordingly disposed of.

REVATI MOHITE DERE, J.

RANJIT MORE, J.