

nsc.

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

WRIT PETITION (LODGING) NO.4129 OF 2018

Roshan Phiroze Ankleswaria

...Petitioner

Versus

The Municipal Corporation of Greater Mumbai and Ors. ...Respondents

Mr.Chirag Balsara a/w Mr.Joel Carlos, Mr.Mihir Mody, Mr.Dhaval Patil i/b
M/s.K.Ashar and Co., for the Petitioner.

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

Ms.K.H.Mastakar, for the Respondent – M.C.G.M.

Mr.Navneet Jadhav, Sub.Eng. (Building & Factory) 'D' Ward is present.

***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 dated
3rd December, 2018, under Section 55 of the Maharashtra Regional and
Town Planning Act, 1966, (M.R.T.P. Act) directing the Petitioner to remove

the unauthorized development, as indicated in the sketch, within 15 days from receipt of the notice.

3. Mr.Balsara, learned counsel for the Petitioner submitted that on the basis of the complaint of the Managing Committee of Asha Mahal CHS Limited and one Aarti K. Shorff, the Designated Officer of the Brihanmumbai Mahanagarpalika, issued notice to the Petitioner directing to remove the said unauthorized construction. This notice was replied by the Petitioner by reply dated 10th September, 2018. Along with the reply, the Petitioner also annexed old documents showing that the alleged unauthorized construction (disputed door) is in existence atleast from 1970. It is the case of the Petitioner that infact the said door is in existence, prior to 1962 and therefore requested the Corporation to withdraw the notice. The Corporation thereafter again issued the impugned notice under Section 55 of the M.R.T.P Act.

4. Having perused the impugned notice, we find that there is no consideration of the Petitioner's reply dated 10th September, 2018, given pursuant to the earlier notice dated 29th August, 2018.

5. Learned Counsel for the M.C.G.M. in the facts and circumstances stated hereinabove, having taken instructions from the concerned Officer, who is present in Court, states that the Petition is premature and what the Petitioner is challenging is only the notice under Section 55 of the M.R.T.P Act. She submits that the Petitioner can give reply to the impugned notice, which shall be considered and thereafter appropriate orders shall be passed under Section 55 of the M.R.T.P Act. Statement accepted.

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

- a) The Petitioner is at liberty to give reply to the impugned notices issued under Section 55 of the M.R.T.P Act, along with supporting documents, within a period of three weeks from today;
- b) If the reply is not filed within a period of three weeks by the Petitioner, the Designated Officer is at liberty to proceed ex-parte;
- c) The concerned Designated Officer, after considering the reply,

give personal hearing to the Petitioner and shall thereafter pass appropriate orders under Section 55 of the M.R.T.P Act, within a period of six weeks from the date of receipt of reply;

- d) In the event, such an order under Section 55 is against the interest of the Petitioner, the same shall not be implemented for a period of two weeks from the date of communication to the Petitioner.

7. The Petition is accordingly disposed of.

REVATI MOHITE DERE, J.

RANJIT MORE, J.