

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.1669 OF 2015

Subhash Chandra Girija Saran Mishra

... Petitioner

Vs

Municipal Corporation of Greater Mumbai &
Ors.

... Respondents

**WITH
CRIMINAL WRIT PETITION NOS.1713 OF 2015
TO
CRIMINAL WRIT PETITION NOS.1735 OF 2015
WITH
CRIMINAL WRIT PETITION NOS.5032 OF 2015
TO
CRIMINAL WRIT PETITION NOS.5035 OF 2015**

**WITH
(NOT ON BOARD MATTERS)
CRIMINAL WRIT PETITION NOS.2263 OF 2018
TO
CRIMINAL WRIT PETITION NOS.2266 OF 2018
WITH
CRIMINAL WRIT PETITION NOS.2556 OF 2018
TO
CRIMINAL WRIT PETITION NOS.2558 OF 2018**

Ms.Usha Kiran Srivastav with Ms.Nupur Awasthi i/b M/s.Consulta
Juris for the Petitioners

Mr.Kunar Wagmare for Resp. No.1 / Corporation

Mr.Vinod Chate, APP, for the Respondent – State

Mr.Ashok S. Rathod – present in person

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: MARCH 19, 2019

P.C.:

1. Rule. By consent, Rule made returnable forthwith and heard finally at the stage of admission itself. Respondents waive notice through their respective Counsel.
2. In all these 35 Writ Petitions, the order dated 12.12.2012 of issuance of process by the learned Metropolitan Magistrate, 42nd Court, Shindewadi, Dadar (East) under section 353A r/w section 141 of Mumbai Municipal Corporation Act, 1888 is challenged.
3. The complaint was filed through the Law Officer of the Mumbai Municipal Corporation, 'N' ward, Ghatkopar, against the petitioners, who are the occupants of their newly developed building, namely, Hansgeet CHS Ltd. During the inspection dated 1.9.2012, it was found and observed that the petitioners have occupied the premises unauthorisedly, without having Occupation Certificate and hence, these petitions.
4. Learned Counsel for the petitioners submits that all the petitioners are old tenants of the said building. They are all poor

persons, who have availed loans on their flats. The Mumbai Municipal Corporation acted upon the complaint filed by respondent No.3, who is one of the tenants. She submits that the Developer has repaired and developed the building but has not submitted all the papers to the Mumbai Municipal Corporation in 2007 for Occupation Certificate and yet, the Occupation Certificate is not yet received. She produces a letter dated 10.10.2018, which is written to the Counsel by Executive Engineer – Building Proposals, Eastern Suburbs II, of the Municipal Corporation, informing that now the Planning Authority of this building is MHADA by notification dated 23.5.2018 and, therefore, the issue of grant of Occupation Certificate pertains to MHADA. The learned Counsel submits that all the petitioners are in fact ready to pay minimum penalty, which is mentioned under section 471 (5th Schedule) of the Mumbai Municipal Corporation Act. She also submitted that the petitioners are pursuing the matter with MHADA.

5. Learned Counsel for the Corporation has submitted to the orders of the Court.

6. Respondent No.3 is personally present. He has not engaged any Counsel. However, these Writ Petitions are of 2015 and in view of the facts and the orders, these petitions are disposed of.

7. I have perused the complaint dated 12.12.2012. Considered the submissions. The petitioners are occupying the premises without Occupation Certificate and hence, the order of issuance of process under section 353A r/w section 471 of the Mumbai Municipal Corporation Act, is legal. Hence, all the petitions are dismissed. However, in view of the submissions of the learned Counsel for the petitioners, the learned Magistrate may consider the case of the petitioners that they are ready to pay the minimum penalty under section 471 of the Mumbai Municipal Corporation Act.

8. Writ Petitions are disposed of accordingly.

(MRIDULA BHATKAR, J.)