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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2024 OF 2021
IN
SUO MOTU PUBLIC INTEREST LITIGATION NO. 1 OF
2020**

M/s. Star Enterprises & Anr. .. Applicants

In the matter between

High Court on its own motion
Building Collapses and lives lost .. Petitioner

Vs.

Bhiwandi Nizampur Municipal
Corporation & Ors. .. Respondents

Mr. G. S. Godbole a/w Mr. Shyam Kapadia a/w Ms. Simeen
Shaikh a/w Ms. Priyanka Gcharge a/w Ms. Anamika Singh i/by
S. K. Srivastav & Co. for applicants.

Mr. Rajesh Patil a/w Ms. K. H. Mastakar, Mr. Om Suryawanshi
i/by Ms. Aruna Savla for respondent no.2-MCGM.

Mr. P. P. Kakade, Government Pleader a/w Ms. R. A. Salunkhe,
AGP for respondent nos. 9 & 10- State.

Ms. Priyanka Naik i/by Mr. P. G. Lad for respondent no.11-
MHADA.

Mr. Nitin Gangal a/w Ms. Prerna Shukla for respondent no.12-
CIDCO.

Ms. Kavita N. Solunke a/w Mr. Mayank Mishra a/w Ms. Mallika
Pujari for respondent no.13-MMRDA.

Mr. Jage Chandrashekhar Chandrakant, Asst.Eng. (Bldg.
Proposal City) present.

Mr. Mangesh Kambli, Beat Officer, Jr. Eng. "C" Ward present.

**CORAM: DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.**

DATE: AUGUST 30,2021

PC:

1. This interim application is at the instance of M/s. Star Enterprises, a partnership firm (hereafter "the said firm" for short), and Mr. Mohammad Amir, one of the partners of the said firm.

2. By presenting this interim application, the applicants seek the following reliefs: -

- (a) that this Hon'ble Court may be pleased to join the Applicants as party Respondents to the above Suo motu Public Interest Litigation No. 1 of 2020 or in the alternative the Applicants may be permitted to intervene in the above Petition;
- (b) that pending the hearing and final disposal of the above Petition, the Municipal Corporation of Greater Mumbai may be directed to consider the proposal submitted by the Applicants to consider the said Gulistan building as Transit building for the purpose of development of the said plots bearing Cadastral Survey Nos. 2575, 2576 and 2577 of Bhuleshwar Division situate at the corner of Ghoghari Mohall and Panjrapole Street now known

as Ismail Curtey Road, without the Fort of Mumbai in the city and Registration District of Mumbai;

- (c) that in alternative to prayer Clause (b) above, this Hon'ble Court may be pleased to direct the Municipal Corporation of Greater Mumbai to consider and approve the Plans submitted by the Applicants for redevelopment of the said plot bearing Cadastral Survey Nos. 2575, 2576 and 2577 of Bhuleshwar Division situate at the corner of Ghoghari Mohall and Panjrapole Street now known as Ismail Curtey Road, without the Fort of Mumbai in the city and Registration District of Mumbai for development of the said plot including for construction of Transit building.
- (d) that pending the hearing and final disposal of the above Petition, this Hon'ble Court may be pleased to extend the time for vacating the Gulistan building for such reasonable period of time as may be required to enable the occupants of Gulistan building to be shifted to Transit Accommodation or rehabilitated in the new building to be constructed bearing Cadastral Survey Nos.2575, 2576 and 2577 of Bhuleshwar Division situate at the corner of Ghoghari Mohall and Panjrapole Street now known as Ismail Curtey Road, without the Fort of Mumbai in the city and Registration District of Mumbai.

3. *Suo Motu* Public Interest Litigation No. 1 of 2020, referred to in prayer (a) (*supra*) was initiated by this Bench after it was reported in the media that a building collapse on September 21, 2020 at Bhiwandi, within Bhiwandi Nizampur Municipal Corporation, had taken lives of 16 people including 8 minors. It was also reported that the collapsed building was in a dilapidated condition. Several orders have been passed in the *suo motu* PIL to ensure that the Bhiwandi Nizampur Municipal Corporation, Municipal Corporation of Greater Mumbai, Kalyan Dombivli Municipal Corporation, Ulhasnagar Municipal Corporation, Thane Municipal Corporation, Vasai-Virar Municipal Corporation, Mira-Bhyander Municipal Corporation, Navi Mumbai Municipal Corporation and Panvel City Municipal Corporation to take appropriate measures against unauthorized/dilapidated buildings so that innocent lives are not lost.

4. The Municipal Corporation of Greater Mumbai (MCGM) has filed Interim Application Nos.1734 and 1735 of 2021 in the *suo motu* PIL bringing to the notice of this Bench that an order dated October 4, 2019 of a co-ordinate Bench of this Court in Interim Application No.1 of 2019 in a writ petition numbered as PIL No. 67 of 2017 has not been complied with. In such writ petition, the petitioner had pointed out construction of a four storied building on Plot No.57/59, Gulistan Apartment at Ismail Curtey Road, Pydhonie, Mumbai 400 003 without any plan having been sanctioned for such

construction by the MCGM. By the time the writ petition stood finally disposed of along with all pending applications by the said order dated October 4, 2019, the building was a G+9 storied building (hereafter "the subject building" for short). The coordinate bench, considering the nature of concern expressed in PIL No. 67 of 2017 and the inaction of the MCGM to take action against the persons responsible for the subject building, passed necessary directions. It was directed that if the residents file undertakings by way of affidavits stating therein that they would not part with possession of the tenements occupied by them and would vacate such tenements within eight months, the MCGM would be restrained from demolishing the subject building.

5. Referring to such order dated October 4, 2019, Mr. Patil, learned advocate for the MCGM, had argued before this Bench on August 5, 2021 that the residents had not vacated their respective tenements in the subject building and that the MCGM ought to be permitted to demolish the subject building. Hearing such submission, appropriate orders have been passed by this Bench on August 5, 2021, August 13, 2021 and August 23, 2021 requiring the residents of the subject building to vacate their respective tenements by August 31, 2021 for facilitating demolition thereof by the MCGM.

6. It is at this stage that the instant interim application has been filed by the applicants claiming to be the owners of the plot of land on which the subject building has been

constructed. Although the applicants have not accepted responsibility for construction of the subject building on the plot of land allegedly owned by them which, as per their admission in the application is presently a G+9 storied building, it does not require intensive research for ascertaining who are the persons responsible for construction of the subject building without any sanctioned building plan or permission issued by the MCGM. While seeking to intervene in the *suo motu* PIL, it is the plea of the applicants that the subject building is structurally stable and that proposal from the side of the applicants having been laid before the MCGM for regularization thereof, this Bench ought to direct the MCGM to consider such proposal for regularization prior to initiating steps to demolish the same. Alternatively, it is the plea of the applicants that since they are owners of properties adjoining the subject building, where they intend to construct new structures and proposals are being laid before the MCGM for grant of building plan/permission, so long the MCGM does not issue building plan or permission to construct and such constructions are also raised on the basis of the plan/permission of the MCGM, the subject building should be allowed to be retained and used as transit accommodation for the residents thereof.

7. Appearing in support of the interim application, Mr. Godbole, learned counsel, contends that all the residents are poor people, who have not been able to locate alternate accommodation during COVID times and, therefore, this

Bench taking a lenient view of the matter ought to grant the relief as claimed in the application.

8. We are surprised not a little at such stand of the applicants. They seek to play the 'victim' card for the residents to have the subject building retained and to be used as transit accommodation despite the same being an illegal and unauthorized structure. If indeed, the applicants are not responsible for construction of the subject building and had not inducted the residents therein for occupying the tenements, it defies logic why the applicants would come forward to secure relief for the residents. The reason is not far to seek. That apart, although they claim to be owners of the plot of land on which the subject building has been constructed illegally and without authorization from the MCGM, they have conveniently neither disclosed who were responsible for construction of the subject building nor accepted responsibility for such construction. This lack of candour on the part of the applicants coupled with the belated attempt to save the subject building from being demolished by citing the precarious condition of the poor residents and their inability to locate alternate accommodation, leaves us bewildered. This Bench has no doubt that the applicants have exhibited extreme lack of solitude for the rule of law. Firstly, construction of a G+9 storied building was undertaken and completed by them without submitting any proposal for building plan to or obtaining a permission from the MCGM to proceed with construction. Secondly, residents were allowed

to occupy tenements in the subject building without, however, letting them know that construction of the subject building has been made without obtaining any permission from the MCGM. Thirdly, no step was taken by the applicants immediately after October 4, 2019 so as to remove the illegality of the subject building in a manner known to law, and/or development of the entire property, including the plots of land adjoining the plot of land on which the subject building has been constructed. Finally, it was only after the order dated August 5, 2021 in Interim Application Nos.1734 and 1735 of 2021 was passed by this Bench that the applicants realized the need to come to the aid of the residents and to seek orders from this Bench for protection of the residents as well as for retention of the subject building.

9. Having regard to the aforesaid facts and circumstances, this Bench has no hesitation to hold that the application is not *bona fide* as well as for ends of justice.

10. That apart, the subject building is not one which suffers from deviations from the building plan/permission granted by the MCGM which could fall for consideration of the MCGM for regularization. It is out-and-out an unauthorized construction throwing the building rules and regulations of the MCGM to the winds. Through several of its decisions, the Supreme Court has offered guidance as to how such unauthorized constructions are to be dealt with. This Bench considers it proper to refer to a few of them hereafter.

11. In **M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sau & Ors.**, reported in (1999) 6 SCC 464, the Supreme Court dismissed an appeal by the appellant-builder and upheld the order under challenge passed by the relevant High Court directing dismantling of the whole project and for restoration of a park to its original condition by observing as follows: -

“73. ... This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles.....”

12. While allowing an appeal and setting aside the impugned judgment of the relevant High Court, the Supreme Court in **Friends Colony Development Committee vs. State of Orissa & Ors.**, reported in (2004) 8 SCC 733, made the following pertinent observations: -

“25. Though the municipal laws permit deviations from sanctioned constructions being regularized by compounding but that is by way of exception.

Unfortunately, the exception, with the lapse of time and frequent exercise of the discretionary power conferred by such exception, has become the rule. Only such deviations deserve to be condoned as are bona fide or are attributable to some mis-understanding or are such deviations as where the benefit gained by demolition would be far less than the disadvantage suffered. Other than these, deliberate deviations do not deserve to be condoned and compounded. Compounding of deviations ought to be kept at a bare minimum. The cases of professional builders stand on a different footing from an individual constructing his own building. A professional builder is supposed to understand the laws better and deviations by such builders can safely be assumed to be deliberate and done with the intention of earning profits and hence deserve to be dealt with sternly so as to act as a deterrent for future. It is common knowledge that the builders enter into under hand dealings. Be that as it may, the State Governments should think of levying heavy penalties on such builders and therefrom develop a welfare fund which can be utilized for compensating and rehabilitating such innocent or unwary buyers who are displaced on account of demolition of illegal constructions.”

13. The plethora of cases decided by the Supreme Court dealing with the menace of illegal and unauthorized constructions of buildings and other structures in different parts of the country were noticed by the Supreme Court once again while deciding **Dipak Kumar Mukherjee vs. Kolkata Municipal Corporation & Ors.**, reported in (2013) 5 SCC 336. The Court held that the menace had acquired monstrous proportion. While allowing the appeal and setting aside the impugned judgment of the relevant High Court, the Court observed in paragraph 8 as follows: -

“8. What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structure not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-storeyed structure raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors.”

14. Not too long ago, the Supreme Court in its decision in **Kerala State Coastal Zone Management Authority vs. State of Kerala, Maradu Municipality & Ors.**, reported in (2019) 7 SCC 248, took note of constructions made in violation of permissions that were issued in violation of relevant statutory provisions and CRZ notifications. Upon taking into consideration various precedents and recording a finding that permission granted by the Panchayat was illegal and void because development activity could not have been permitted in the prohibited zone, the Court directed that all the structures be removed forthwith within a period of one month from date. This Bench can take judicial notice of the

fact that a couple of multi-storied buildings [in excess of 20 (twenty) floors] were demolished in a couple of minutes by using the latest technology for demolition of multi-storied buildings.

15. Having regard to the aforesaid precedent as well as the decisions referred to therein and also bearing in mind the fact that construction of the subject building in violation of the municipal laws cannot be compounded, there is absolutely no justification for this Bench to accede to the request of the applicants for a direction on the MCGM to consider the proposal for regularization thereof. Any such direction would not only be contrary to law but it would have the effect of rendering the public trust doctrine as a paper doctrine. To borrow the language of the Supreme Court, there should be zero tolerance of illegal and unauthorized constructions by those who treat the law to be their subservient. This Bench, thus, cannot be a party to activities that would spare the persons responsible for such unauthorized construction and those who, despite having a public duty to ensure that buildings are constructed only in accordance with the municipal laws, allow unauthorized constructions to mushroom by turning a blind eye to the same.

16. This Bench is conscious that the co-ordinate Bench in the order dated October 4, 2019 had observed that its order does not bar anyone from seeking regularization. Such an observation does not advance the case of the applicants in as

much as Mr. Godbole has not invited our attention to any provision of the Mumbai Municipal Corporation Act, 1888 which permits regularization of construction of a multi-storied building (G+9 stories in this case) without obtaining the building plan/permission from the MCGM.

17. Since the subject building could not have been constructed without the connivance of municipal officers/employees, the Municipal Commissioner, MCGM is directed to conduct an inquiry to fix responsibility and to report to this Bench on the returnable date of the other applications filed by the MCGM and the residents, i.e., October 4, 2021.

18. For the reasons aforesaid, Interim Application No. 2024 of 2021 stands dismissed, keeping the option open for this Bench to pass further orders against the applicants as the situation would warrant. There shall be no order as to costs.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)

PRAVIN
DASHARATH
PANDIT

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