

2. We say the Petitioner ‘claims’ because it seems that there are some disputes between the Society and the Petitioner as to the Petitioner’s membership of the Society, and for one of the flats, even of ownership. That is not the subject matter of this Writ Petition, and we are expressing no view in that regard. Parties are left to their remedies in accordance with law before a jurisdictionally competent forum or tribunal.

3. The complaint in the Petition is that someone, the Petitioner does not know for certain who, but has suspicions, demolished what Mr Sawant for the Petitioner calls ‘girders’ relating to two enclosed balconies. Photographs annexed to the Petition including those from page 112 seem, prima facie, to indicate that what has been affected is the outermost parapet wall of at least two of these flats.

4. The first point to be noted is that at pages 102 and 103, there are notices under Section 351 of the Mumbai Municipal Corporation Act, 1888 (“**BMC Act**”). The notice at page 102 is in respect of Flat No. 12. The notice at page 103 is in respect of Flat No. 8 although the endorsement on the photocopy is somewhat unclear. Annexed to the notices, as usual, is a sketch of the offending structures.

5. This is of some consequence because of the detailed order that came to be passed on 5th September 2022 (RD Dhanuka, J as he then was and one of us, Kamal Khata, J). A copy of that order is from pages 216 to 220 of the Petition paper-book. It reads as follows:

“1. By this petition under Article 226 of the Constitution of India, the petitioner is seeking directions to Respondent nos.1 to 4 to grant permission to the petitioner to restore/repair fat nos.8 and 12 situated in Om Satnam Cooperative Housing Society Limited, 3rd floor, 3rd road, Khar West, Mumbai, at par with other fats situated in the said society and for damages for demolishing fat nos.8 and 12 by respondents.

2. Mr. Sawant, the learned Counsel for the petitioner, on instructions, states that at this stage, his client does not want to press prayer clause (b) and (c). Statement is accepted.

3. Mr. Sawant, on instructions states that, his client would apply for restoration/repair of the fats as described in prayer clause (a) with the Municipal Corporation within two weeks from today and will furnish a copy thereof to Respondent no.5 society. Statement is accepted.

4. The Corporation is directed to furnish a list of requisitions that would be required to be complied with by the petitioner. The petitioner to submit the details/documents within 2 weeks from the date of receiving such requisition. If any compliance is required to be made by Respondent no.8, the respondent no.8 to comply.

5. Learned Counsel for the petitioner and learned Counsel for respondent nos.5 to 8 jointly agree that this Court is not required to go into the allegations as to who has carried out the demolition of the offending structure. We accept the statement and do not propose to go into such question, in this order.

6. The petitioner has no objection if the authorized representative of respondent no.8 Society also remains present at the time of application proposed to be made by

the petitioner before the competent authority of Municipal Corporation. However, it is expected that the authorized representative of Respondent no.8 will cooperate with the Municipal Corporation and the petitioner while considering the application for restoration/repair.

7. Respondent no.8 would be entitled to file its say on the application within one week from the date of filing such application, with a copy to be served upon the petitioner.

8. Petitioner as well as respondent no.8 shall make an endeavour to produce a copy of the sanctioned plan at the time of hearing or along with application/reply.

9. Corporation shall also make an effort to trace the original sanctioned plans of these fats and if traced, copy thereof shall be supplied to Respondent no.8 on payment of charges, if any.

10. The parties are allowed to rely upon other documentary records to show the actual sanctioned area of these fats before the competent authority.

11. The Municipal Corporation shall give 72 hours notice in advance to the petitioner.

12. The Municipal Corporation shall communicate the order that would be passed by it, to the petitioner as well as Respondent no.8 within one week from the date of passing such order.

13. It is made clear that the petitioner not having challenged the action on the part of the Municipal Corporation u/s 351 of M.M.C. Act, in respect of writ fats shown on page nos.85 and 86 of the petition, the petitioner would not be entitled to seek restoration/repair of the structure which was the subject matter of notices u/s 351 of the M.M.C. Act.

14. We expect that none of the members of the society as well as the petitioner will carry out unauthorized

construction in the tenements occupied by them in future.

15. It is made clear that the petitioner would make an application for restoration/repair, in accordance with the procedure prescribed by the Municipal Corporation.

16. In addition to on-line application, the petitioner would be at liberty to file hard copies of application made to the Municipal Commissioner with a copy to be served upon respondent no.8.

17. Writ petition is disposed of with no order as to costs.

18. Parties to act on authenticated copy of this order.”

(Emphasis added)

6. The order is relevant when seen with the prayers in the Petition at pages 62 to 64 which read thus:

“(a) That this Hon’ble Court be pleased to pass appropriate direction to the Respondent No. 1 to 6 thereby calling for the record and proceedings pertaining to the impugned order dated 24th November, 2022 passed by the Respondent Nos. 5 and 6 and after perusing the legality, validity and propriety of the impugned order this Hon’ble Court be pleased to quash and set aside the same and be pleased to allow the Petitioner to carry out repairs/restore the Flat Nos. 8 and 12 at par with flats situated in Respondent No.10 Society;

(b) That this Hon’ble Court be pleased to pass appropriate direction to the Respondent Nos. 2 to 6 to forthwith allow the petitioner to restore/repair and reconstruct flat Nos. 8 and 12 situated in Respondent No. 10 society at par with other flats situated in the Respondent No. 10 society;

(c) That this Hon’ble Court be pleased to pass an order

thereby awarding damages to the extent of Rs.5 crores to the petitioner for illegally demolishing flat Nos. 8 and 12 by the respondent Nos. 7 to 9 and their hirelings and more particularly they have misused the letter/order of the MCGM and proceeded to demolish/puncture flat Nos. 8 and 12 of the petitioner thereby making the said flats not usable and accordingly direct the respondent Nos. 7 to 9 to forthwith pay the said damages to the petitioner herein;

(d) This Hon'ble Court be pleased to pass an order thereby directing the Respondent Nos. 1 to 6 to allow the petitioner to restore/repair and reconstruct the illegally demolished portions of the flat Nos. 8 and 12 pursuant to the orders passed by this Hon'ble Court on 5th September, 2022, 3rd October 2022 and 18th October, 2022;

(e) This Hon'ble Court be pleased to pass an order thereby directing the respondents to forth pay the restoration/repair charges of the petitioners flat No. 8 and 12 situated in Om Satnam Co-operative Housing Society Ltd., or in the alternative this Hon'ble Court be pleased to pass an order thereby initiating action against the occupiers of the respondent No. 10 society for enclosing their balconies as similarly enclosed by the petitioner against whom no action has been initiated by the respondent Nos. 1 to 6."

7. It is clear that, without reserving any rights or liberty, prayer clauses (b) and (c) have been given up. Prayer clause (e) will not survive in view of the order that we propose to pass today. Prayer clause (d) will also be unnecessary in view of the following directions.

8. To return to the order of 5th September 2022, we note that nobody seems to have sanctioned plans of the building. The Society's records do not show them and the MCGM itself has been unable to trace them. Mr Bhosale confirms on instructions that those plans are not available with the MCGM.

9. The Division Bench also noted that there is no question of going into the allegation of who triggered or effected or carried out this demolition. That was not examined at the time by the Division Bench and we see no reason why we should engage in that exercise today. Since both the Society and the MCGM stoutly deny that they had anything to do with the demolition, this might be an entirely fruitless exercise and one entirely outside the remit of a Writ Court.

10. This takes us to paragraphs 13 and 15 of the impugned order. Paragraph 13, emphasized above, is particularly important. It tells us that while the Petitioner is entitled to a restoration or a repair, *this must be in a manner not inconsistent with the Section 351 notices. This is relevant because there is no challenge to the Section 351 notices in the Petition at all.*

11. Mr Bhosale for the MCGM quite correctly states that it is not possible for the MCGM to simply say that permission will be granted. We understand this because not only will the MCGM have a list of requisitions, some of which are set out at pages 292 and 293 to the Petition, but there may also be other considerations such as the types of materials to be used, the exact dimensions of what is being proposed, the internal alignments of these works and so forth.

We do not believe that it is for us in our jurisdiction under Article 226 of the Constitution of India to minutely supervise such civil works. That is a matter best left to the Corporation and we have no doubt that the Corporation will not only supervise the work but will ensure exact adherence to whatever proposal is finally approved, that is to say, a proposal that is not inconsistent with the Section 351 notices. To make this abundantly clear, the Petitioner is not entitled to a restoration of the civil works as they stood prior to the demolition but only to a restoration of the works that brings them into line with the Section 351 notices. Of necessity, this means that the reliefs sought by the Petitioner in prayer clause (a) that he be permitted to restore the flats “at par with flats situated in the 10th Respondent Society” is expressly rejected.

12. There is no question of this Petitioner seeking parity with other flats in the building. That cannot be the subject matter of this dispute. Mr Bhosale has instructions to state that once there is compliance with the MCGM requisitions and the submission of all necessary documents including the required detailed plans and specifications, the MCGM will consider and dispose of that application within a period of three weeks from the date of the submission.

13. Mr Sawant states that the application complete in all particulars will be made on or before 11th September 2023. We accept that statement.

14. The requisitions by the MCGM include at Item 7 a no objection certificate (“NOC”) from the Society for the proposed work. We believe that this can be dispensed with today since the Society is before us, and Mr Shah has instructions to state that the Society is not opposing a restoration in a manner not inconsistent with but in line with the Section 351 notices. The MCGM will therefore not insist on a formal NOC from the Society under requirement No. 7.

15. There is also a requirement for a bank guarantee, and we are told by Mr Bhosale on instructions that this is necessary for the removal of any debris that may be generated during the course of this work. If that debris is not removed as required by law by the person carrying out the work, then the MCGM will be entitled to invoke the bank guarantee. We trust that this will be in a reasonable amount.

16. Condition 5 also has a requirement for a parking statement. That is clearly inapplicable and there is no question of a drawing in accordance with DCPR 2034 since the proposal is for compliance with the Section 351 notice. Similarly, Item 10 regarding earlier Occupation Certificate drawings is now incapable of compliance in view of what has transpired and become part of the record of this Court. We do however state that a structural stability certificate to the extent necessary will be required in compliance with Condition No.12. This is because the building itself is quite old, there are no structural or architectural drawings, and no one is able to tell what

loads can and cannot be borne by the structure. That is a technical requirement for the MCGM to assess.

17. Clause 14 of the requisition list again requiring a submission of documents as per DCPR 2034 and Ease of Doing Business (“**EODB**”) guidelines will not apply in the facts and circumstances of the case.

18. We have clarified this to avoid any future litigations and disputes. The MCGM must take a reasonable view bearing in mind that what is being proposed now is a repair or a restoration of the structure to bring it into line with the MCGM’s own Section 351 notice and nothing beyond that.

19. We do not believe any further orders are required in the Petition. It is disposed of in these terms but there will be no order as to costs.

20. So far as the structural stability is concerned, we make it clear that what is required is not a stability certificate for the entire building but for the work in question and the loads that are anticipated or proposed as a result of this work.

(Kamal Khata, J)

(G. S. Patel, J)