

Prajakta Vartak

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

WRIT PETITION NO. 435 OF 2020

Rajesh Ashok Keny

.Petitioner

Vs.

Municipal Corporation of Gr. Mumbai & Ors.

.Respondents

Mr. Pradeep Thorat for the Petitioner.

Mr. Kunal Waghmare for MCGM.

CORAM : G. S. KULKARNI &
R. N. LADDHA, JJ.

DATE : APRIL 24, 2023

P.C.:

1. We have heard Mr. Thorat, learned counsel for the petitioner and Mr. Waghmare, learned counsel for respondent nos.1 to 3.

2. Respondent nos.1 is the Municipal Corporation of Greater Mumbai (for short, "MCGM"). Respondent nos.2 and 3 are its officers. Respondent nos.4, 5 and 6 are the parties against whom the petitioner has alleged that they have undertaken illegal construction subject matter of the present proceedings.

3. A co-ordinate bench of this Court by an order dated 07 February, 2023, had issued notice on the present proceedings. There is an office report in regard to the service of notice on the respondents. In so far as service on respondent no.6 is concerned, it is stated in the bailiff's

report that respondent no.6 is not residing at the address as set out, and his current address is not known. Respondent nos.4 and 5 are served, however, they are not represented.

4. The present petition has been filed praying for the following reliefs:-

“a) That the Hon’ble Court be pleased to issue a writ of mandamus or any other writ, order or direction in the nature of mandamus, calling upon the respondent No.1 to 3 and its concerned officers to carry out their statutory duties and obligations, and to rightfully exercise the powers and jurisdiction vested in them and take appropriate action to demolish and /or remove /pull down dismantle, ‘the said illegal and unauthorized constructions i.e. 1) shed with MS Section GI Sheet on the Terrace of building known as “JAYSHREE PLAZA” 2) illegally constructed banquet hall Namely “Jaganath Banquet Hall” on above fourth floor of building i.e. on terrace 3) illegal alteration and modification at first floor of building and converted in to commercial premises and running GYM under name and style as “Perfect Gym” 4) at ground floor of the building walls of shop are illegally demolished and also done illegal and unauthorized alteration and modification of shops 5) Construction of unauthorized toilets and other structures at the ground floor of building 6) Unauthorized modification and alteration with changes in wall and beam of building by Dr. Kishori Kadam at third floor 7) unauthorized construction done by Saraswat Bank and NKJSB Bank at Ground floor 8) unauthorized construction done by Noble Chemist in Ground Floor 9) several illegal and unauthorized constructions in building known as “JAYSHREE PLAZA”, at the said property i.e. building known as “JAYSHREE PLAZA” constructed on the said property i.e. Near Pawar International School, adjacent to Pride Hotel, L.B.S Road, Bhandup(W), Mumbai- 400078, lying, being and situated upon C.T.S No. 643, Taluka-Kurla under jurisdiction of ‘S’ ward.

b) That the Hon’ble Court be pleased to direct the Respondent No.1 to 6 to produce the files relating to the said property, including sanction plans, IOD, commencement certificate, occupation certificate and building completion certificate and all other relevant documents and permissions/ authorizations if any in respect in respect of the said property i.e. building known as “JAYSHREE PLAZA” constructed on the said property i.e. Near Pawar International School, adjacent to Pride Hotel, L.B.S Road,

Bhandup(W), Mumbai- 400078, lying, being and situated upon C.T.S No. 643, Taluka-Kurla under jurisdiction of 'S' ward.

c) That the Hon'ble Court be pleased to direct the Respondent No.1 to 6 to comply order dated 23rd April, 2019 passed by His Hon'ble Justice Shri. S. C. Dharmadhikari and His Hon'ble Justice Shri. B. P. Colabawalla in Writ Petition No. 2420 of 2018.

d) That the Hon'ble Court be pleased to be pleased to take strict legal action against respondent no.2 to 3 for non-complying order dated 23rd April, 2019 passed by His Hon'ble Justice Shri. S. C. Dharmadhikari and His Hon'ble Justice Shri. B. P. Colabawalla in Writ Petition No. 2420 of 2018.

e) That the Hon'ble Court be pleased to be pleased to appoint special officers of the MCGM to comply order dated 23rd April, 2019 passed by His Hon'ble Justice Shri. S. C. Dharmadhikari and His Hon'ble Justice Shri. B. P. Colabawalla in Writ Petition No.2420 of 2018 and take action against illegal and unauthorized construction within specified time framed.

f) That Pending the hearing and final disposal of the writ petition this Hon'ble court be pleased to direct the respondent no. 1 to 3 visit and inspect each premises of the said property i.e. building known as "JAYSHREE PLAZA" constructed on the said property i.e. Near Pawar International School, adjacent to Pride Hotel, L.B.S Road, Bhandup(W), Mumbai- 400078, lying, being and situated upon C.T.S No. 643, Taluka-Kurla under jurisdiction of 'S' ward and submit report before this Hon'ble court in order to ascertain exact illegal and unauthorized construction carried out in contravention of the approved plan by the respondent no.4 to 6 at the said property.

g) That pending the hearing and final disposal of the writ petition this Honourable Court be pleased to appoint an officer of this Court as Commissioner to visit the said property i.e. building known as "JAYSHREE PLAZA" constructed on the said property i.e. Near Pawar International School, adjacent to Pride Hotel, L.B.S Road, Bhandup(W), Mumbai- 400078, lying, being and situated upon C.T.S No. 643, Taluka-Kurla under jurisdiction of 'S' ward and submit report before this Hon'ble court in order to ascertain exact illegal and unauthorized construction carried out by the respondent no.4 to 6 at the said property in contravention of the approved plans.

h) For interim and ad interim reliefs in term of prayers (f) to (g)."

5. We have perused the record as also the report of the MCGM dated 23 July, 2019 (Exhibit I-2, page 221) setting out the details of the

unauthorized construction as undertaken by respondent nos.4, 5 and 6.

6. Mr. Waghmare, learned counsel for the municipal corporation has placed on record another report dated 06 March, 2023 which sets out that as per the available office records, the municipal corporation had initiated actions against unauthorized work in the building known as Jayshree Plaza located at C.T.S. No. 643, 643/1 to 648 of Village Kanjur, L.B.S. Marg, Bhandup (W.) Mumbai, subject matter of the present proceedings as per the complaint as made by the petitioner. A summary of the actions as taken is also set out. It is stated by Mr. Waghmare that except for the construction of sr. no. 3 as contained in the report, all the proposals for retention of the construction have been rejected by the MCGM.

7. In the aforesaid circumstances, in our opinion, further adjudication of this petition is not called for. The MCGM shall proceed to take further appropriate action against the unauthorized construction as may be permissible in law.

8. We accordingly dispose of the petition in the above terms. No costs.

[R. N. LADDHA, J.]

[G. S. KULKARNI, J.]