

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 786 OF 2024  
WITH  
INTERIM APPLICATION NO. 14550 OF 2024

M/s. G. K. A. Hotels Private Limited Thr. Its      ...Appellant/  
Director Gul K. Achhra      Applicant

**Versus**

Mumbai Municipal Corporation H-west Ward      ...Respondent

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Mr. Pradeep Thorat a/w G.K. Achhra for the Appellant/Applicant.  
Mr. Om Suryawanshi i/b Komal Punjabi for Respondent/Corporation.  
Mr. Milind Kadam, Designated Officer, H/West Ward present.

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**CORAM : M.M. SATHAYE, J.**  
**DATE : 19<sup>th</sup> NOVEMBER 2024**

**P.C. :**

1. Heard learned counsel for the Appellant and learned counsel for the Respondent/Corporation.
2. The impugned notice is issued under Section 488 of the Mumbai Municipal Corporation Act, 1888. Perusal of the impugned notice indicates that it is issued pursuant to the direction of this Court in order dated 11/09/2024 in Writ Petition No. 3616 of 2018.
3. Learned counsel for the Appellant asserts that the Appellant's structure was not subject matter of that Writ Petition because apparently that Writ Petition was in respect of unauthorised construction of 2<sup>nd</sup> floor onwards in Shivanjali CHS Ltd building, whereas, present subject matter structure is on ground floor and in respect of shop Nos. 6, 7 and 8 with temporary monsoon terrace shed in

Baba Dashrath Ramji Ki Chawl, situated at 35, Dr. Ambedkar Road, Khar Danda Road, Khar (W), Mumbai 400052, having CTS No. E 86 to E 91.

4. Perused the order dated 11/09/2024. It directs the Respondent Corporation to execute notice dated 12/06/2018. It is submitted that it is a speaking order dated 12/06/2018, based on Notice dated 12/09/2017 which in turn is based on Order dated 07/06/2017 passed by this Court in W.P.No.56 of 2017.

5. Perusal of the order dated 11/09/2024 shows that that indeed a reference is made to Writ Petition No. 56 of 2017 instituted by Shivanjali CHS Society which was in respect of alleged unauthorised structure at the entrance of the building. Writ Petition No. 56 of 2017 was disposed of on 07/06/2017 directing the Respondent/Corporation to visit the premises and if any illegality associated with the structures which were subject matter of that petition was found, a direction was issued to forthwith initiate action.

6. It is asserted that pursuant to this direction, a notice dated 12/09/2017 was issued by the Respondent-Corporation under Section 53 (1) of the M.R.T.P. Act to the Developer, owner & occupier of Shivanjali Building setting out a schedule describing alleged unauthorised structures (page 106 of Appeal paperback).

7. It is further asserted that pursuant to this notice, hearing took place and a speaking order was passed on 12/06/2018 directing removal of unauthorised work and it is obvious that this order relates to schedule in the notice dated 12/09/2017.

8. Learned counsel for the Respondent/Municipal Corporation seeks time to file detailed affidavit and it is not pointed out *prima facie* how present subject matter property (in Baba Dashrath Ramji Ki Chawl) is the same or is part of the schedule to notice dated 12/09/2017. He submits that impugned Notice dated 08/10/2024 on page no. 482 of appeal paperbook is issued to shop no. 9 and not to subject matter shops. It is however asserted in plaint para no. 28 that impugned notice was pasted and demolition of its subject matter shops are threatened.

9. Opening paragraph No. 3 of the Order of this Court dated 11/09/2014 in Writ Petition No. 3616 of 2018 reads thus :

“The Petitioner challenges notice No.CE/4362/BSII/AH dated 12th June 2018 under Section 53 of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act") by the Brihanmumbai Municipal Corporation ("BMC") for the removal of the structure viz. (i) work carried out beyond the approved plan, i.e. 4th floor to 8th floor, ii) work carried out beyond the approved plan i.e. 2nd floor to 8th floor Phase 1.”

It therefore *prima facie* appears that the said petition was in respect of 2<sup>nd</sup> floor onwards of the society building.

10. In the aforesaid facts and circumstances, detail consideration of the matter is required, especially as to whether the suit property - Appellant's shops are covered under schedule to notice dated 12/09/2017 and speaking order dated 12/06/2018 and to that extent, arguable case is made out.

11. Hence, the following order.

(i) Issue notice to Respondent/Corporation, returnable on 16/12/2024. **Matter to be listed on returnable date in urgent admission category.**

(ii) Learned counsel for the Respondent/Corporation waives service.

(iii) Necessary affidavit-in-reply be filed on or before 09/12/2024. Rejoinder, if any, be filed on or before next date.

(iv) Till, next date, the Respondent/Corporation is directed not to take coercive action against Shop Nos. 6, 7 and 8 in Baba Dashrath Ramji Ki Chawl, situated at 35, Dr. Ambedkar Road, Khar Danda Road, Khar (W), Mumbai 400052, having CTS No. E 86 to E 91, pursuant to the impugned notice dated 08.10.2024.

12. All concerned to act on duly authenticated or digitally signed copy of this order.

**(M.M. SATHAYE, J.)**