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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 438 OF 2024

Omana Padmanabhan Nair ...Petitioner

Versus

The Municipal Corporation of Greater Mumbai ...Respondents
& Ors

WITH

WRIT PETITION NO. 424 OF 2024

Quality Impex Pvt Ltd ...Petitioner

Versus

The Municipal Corporation of Greater Mumbai ...Respondents
& Ors

WITH

WRIT PETITION NO. 436 OF 2024

Vincent Paul Benedict Peris ...Petitioner

Versus

The Municipal Corporation of Greater Mumbai ...Respondents
& Ors

WITH

WRIT PETITION NO. 423 OF 2024

Jayesh Shankar Desai ...Petitioner

Versus

The Municipal Corporation of Greater Mumbai ...Respondents
& Ors

WITH

WRIT PETITION NO. 422 OF 2024

Jayshankar Padmanabh Shetty ...Petitioner
Versus
The Municipal Corporation of Greater Mumbai ...Respondents
& Ors

WITH

WRIT PETITION NO. 434 OF 2024

Prema Sadashiv Shetty ...Petitioner
Versus
The Municipal Corporation of Greater Mumbai ...Respondents
& Ors

WITH

WRIT PETITION NO. 435 OF 2024

Ashok Shetty ...Petitioner
Versus
The Municipal Corporation of Greater Mumbai ...Respondents
& Ors

Mr Dinyar Madon, Senior Advocate, with JS Kini & Om Kini, i/b Sapana Krishnappa, for the Petitioner in WP/438/2024, WP/424/2024, WP/436/2024, WP/423/2024, WP/422/2024, WP/434/2024 & WP/435/2024.

Mr NV Walawalkar, Senior Advocate, with Joel Carlos & Pooja Yadav, for the Respondent-BMC in WP/433/2024.

Mr NV Walawalkar, Senior Advocate, with Shailesh Shah, Senior Advocate & Pooja Yadav, i/b Sunil Sonawane, for the Respondent-BMC in WP/438/2024, WP/424/2024 & WP/423/2024.

Mr Shailesh Shah, Senior Advocate, with Pooja Yadav, i/b Sunil Sonawane, for the Respondent-BMC in WP/436/2024 &

WP/434/2024.

Mr Joel Carlos, *with Pooja Yadav, i/b Sunil Sonawane, for the Respondent-BMC in WP/422/2024 & WP/435/2024.*

Mr Amol Shetgiri, *Architect, is present.*

**CORAM G.S. Patel &
Kamal Khata, JJ.**

DATED: 18th April 2024

PC:-

1. Pursuant to our previous order dated 4th April 2024, Mr Shetgiri has made a further report of 16th April 2024. This relates to various lofts and mezzanines in the structure (which is subdivided) that is the subject matter of Writ Petitions Nos 438, 424, 436, 423, 422, 434 & 435 of 2024.
2. We are expressing no opinion on the merits, and we leave it now to the Brihanmumbai Municipal Corporation (“**BMC**”) to consider in accordance with law what portion or portions of the structure in question can be condoned/retained and what are impermissible.
3. We clarify that there can be no longer any further controversy regarding the tikka sheets and the outlines or footprints of the building because it is agreed before us that it is Mr Shetgiri’s drawings, obtained pursuant to the order of the Court that will provide the baseline for all actions and permissions going forward.
4. Mr Walawalkar points out, and we think quite correctly, that there was an external structure abutting the main structure that was removed before Mr Shetgiri made his first visit. Obviously, the BMC

will be entitled to take action in regard to that structure and its removal. In other words, the mere removal of the structure will not exonerate or exempt the Petitioners from liability for having put it up in the first place. That contention is expressly left open.

5. Somewhere in the Affidavit in Reply of the BMC there is now an assertion that the loft permission granted in 1995, nearly three decades ago was by an officer who was not authorized to do so. We are not permitting the BMC to take this as a reason, justification or as a cause anywhere. It is very much an afterthought. There is no other way of looking at it. The officer in question has of course retired but it is unacceptable to us that the BMC can claim today that for the better part of half a century it was oblivious to what was happening on its own records and yet it found it fit to proceed with an initial order of demolition that came to be challenged in this Court. The BMC will take the record as it stands, that is to say with the permission that the Petitioners claim. It is for the BMC to see whether the construction that is actually reported according to Mr Shetgiri's reports is in conformity with that permission and in conformity with the law/development regulation that is applicable.

6. We lastly clarify that we have not in this or any previous order certified on merits any portion of the structure as being lawful or authorized. That is an assessment on merits that the BMC must make having regard to the state of the record and the state of the law.

7. Mr Shetgiri's supplementary report is taken on record and marked "X1" for identification with today's date.

8. The order of 10th March 2023 ordering the demolition will not survive and is therefore quashed and set aside.

9. At this stage, Mr Madon seeks that the direction may be in regard to the loft/mezzanine. Mr Walawalkar says the permission as it stands does not mention the word mezzanine.

10. Our direction is clear. The BMC action must be guided precisely by what is permissible in law and what is expressly and clearly stated in the permission itself. If any order is passed by the BMC which is adverse to the Petitioners it will not be acted upon for a period of five weeks. This is for two reasons. First, there is no real urgency so far as these structures are concerned. They have been in existence for a very long time. The second and perhaps more pressing urgency is that we wish to avoid adding to the trauma of our colleagues during the summer vacation.

11. These Petitions are disposed of in these terms. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)