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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 551 OF 2024

**UNIVERSAL MAJESTIC
PREMISES CO-OPERATIVE
SOCIETY LIMITED,**
situated at P.L. Lokhande Marg,
Mumbai – 400 043

... PETITIONER

~ VERSUS ~

- 1. DESIGNATED
OFFICER-II/ASSISTANT
ENGINEER (B & F), WARD M,
EAST MUNICIPAL CORPORATION
OF GREATER MUMBAI,**
having office at M/E Ward Office
Building 1st Floor, Room No.103,
Late Madhukar Kadam Marg,
Govandi Mumbai – 400 043.
- 2. EXECUTIVE ENGINEER
(BUILDING PROPOSAL)
WARD M, EAST, MUNICIPAL
CORPORATION OF GREATER
MUMBAI,**
having office at L.B.S. Marg
Surya Nagar, Vikhroli (West)
Mumbai 400 083

... RESPONDENTS

**PRADNYA
MAKARAND
BHOGALE**

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PRADNYA MAKARAND
BHOGALE
Date: 2024.07.08
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ALONG WITH
INTERIM APPLICATION (L) NO. 20815 OF 2024
IN
WRIT PETITION NO. 551 OF 2024

SANJAY SUSHIL BHOSALE,
Aged 52 years, Indian Inhabitant,
carrying on business in the name and
style of 'Hotel Universal Garden'
situated at – F2B, Universal Majestic
Premises Co-operative Society Ltd.,
C.T.S. No.-4A/8/1 & 4A/8/2, Borla
Village, Opp. RBK International
School, P.L. Lokhande Marg,
Ghatkopar – Mankhurd Link Road,
Govandi, Mumbai – 400 003.

...APPLICANT

~ IN THE MATTER OF ~

- 1. UNIVERSAL MAJESTIC
PREMISES CO-OPERATIVE
SOCIETY LIMITED,**
Situated at – F2B, Universal Majestic
Premises Co-operative Society Ltd.,
C.T.S. No.-4A/8/1 & 4A/8/2, Borla
Village, Opp. RBK International
School, P. L. Lokhande Marg,
Ghatkopar – Mankhurd Link Road,
Govandi, Mumbai – 400 003.

...PETITIONER

~ VERSUS ~

- 1. DESIGNATED OFFICER-II,
ASSISTANT ENGINEER (B & F),
WARD (M) EAST, MUNICIPAL
CORPORATION OF GREATER**

MUMBAI,
Having his office at M/E, Ward Office
Building, 1st Floor, Room No.103,
Govandi, Mumbai – 400 043.

**2. EXECUTIVE ENGINEER (BP)
WARD (EAST), MUNICIPAL
CORPORATION OF GREATER
MUMBAI,**
Having his office at L.B.S. Marg,
Surya Nagar, Vikhroli (West),
Mumbai.

... RESPONDENTS

APPEARANCES

FOR THE PETITIONER	Mr. Vineet Naik, Senior Advocate, <i>a/w Mr. Rohan Kadam, Mr. Abhishek Adke, Mr. Sagar Vichare, i/b. Mr. Abhishek Adke.</i>
FOR THE INTERVENOR/APPLICA NT IN IAL/20815/2024	Mr. Venkatesh Dhond, Senior Advocate, a/w Mr. Prateek Paranjpe, Mr. Rohit Jain, Mr. Govind Rajagopal.
FOR RESPONDENT-BMC	Ms. Geeta Shastri, a/w Mr. Milind More a/w Ms. S. Tondwalkar.
PRESENT IN COURT	Mr. Anandrao Pawar, SE (BP), Mr. Arvind Sangvekar (AEB-IV) M/E, Mr. Y. R. Jadhav, Dy. CFO, Mr. R. B. Ghadge, DFO.

**CORAM : M.S. Sonak &
Kamal Khata, JJ.**

**RESERVED ON : 4th July 2024
PRONOUNCED ON : 8th July 2024**

JUDGMENT (Per M.S. Sonak, J.):

1. Heard learned counsel for the parties.
2. Prayer clause (a) of Interim Application (L) No.20815 of 2024 is allowed, and the applicant is impleaded as Respondent in Writ Petition No.551 of 2024. The Petitioner is to carry out the amendment forthwith.
3. The Petitioner in Writ Petition No.551 of 2024 is a society comprising 49 members who occupy commercial premises in the commercial building known as 'Universal Majestic'. This building consists of two levels of basement + ground floor + 15 upper floors constructed on plot bearing C.T.S. No.4A/8/1 and 4A/8/2 of village Borla, Chembur ("said building").
4. In June 2019, several members of the Petitioner society received notices under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP Act") from the Brihanmumbai Municipal Corporation Act 1888 ("BMC") in the context of several illegalities and unauthorised constructions.
5. In the course of arguments, we were informed that the illegal constructions by the members had consumed excess Floor Space Index ("FSI") to the extent of almost 1,00,000 sq. ft. by flagrantly deviating from the approved plans and the rules and regulations subject to which permissions were granted for the construction of the said building. The notices, issued after following the due process of law, had directed the members of the Petitioner to restore the premises in terms of the last approved plan concerning the said

building. One such notice dated 25th June 2019 is enclosed as Exhibit 'B' along with the Petition.

6. The Applicant in Interim Application (L) No.20815 of 2024, i.e. Mr. Sanjay Sushil Bhosale, is concerned with premises admeasuring about 5,000 sq.ft., out of which only 1,500 sq. ft. were constructed within the permissible limits. Under the approved plans, the balance area of 3,500 sq. ft. was meant to be twelve parking garages. However, this Applicant - Bhosale, has converted the entire 5,000 sq. ft. area into a hotel comprising inter alia about twenty-three rooms.

7. In terms of the order dated 16th February 2023, in Appeal from Order No.109 of 2023, the learned Single Judge of this Court, noticing the enormity of the illegality and the fact that Bhosale continued to profit from this illegality, has appointed a Receiver in respect of these premises. The hotel rooms have now been sealed off.

8. Mr Venkatesh Dhond, learned Senior Advocate for Bhosale, to a query from this Court as to whether the order dated 16th February 2023 was challenged by Bhosale, submitted that this order was not challenged since Bhosale was seeking the benefit of the said order by which certain directions were issued to BMC to dispose of Bhosale's application for regularisation. Further reference will be made to this order dated 16th February 2023, in the course of this order. Thus, the order dated 16th February 2023 has attained finality.

9. From 2019 onwards, the members of the Petitioner Society and now the Petitioner Society have succeeded in stalling the

demolition of the unauthorised constructions put up by them, involving unauthorised users of FSI to the extent of almost 1,00,000 sq. ft. The members of the Petitioner Society and the Petitioner Society do not seriously deny the fact that they have made the unauthorised constructions after deviating from the last approved plans. Or rather, it is their case that the builder/developer has done such unauthorised constructions and the members of the Petitioner society were only enjoying or benefiting from them.

10. However, the demolition or the restoration to the last approved plan status is resisted on the ground that some members of the Petitioner have applied or the Petitioner proposes to apply for 'regularisation' and until such regularisation applications are not disposed of by the BMC in accordance with law, the BMC should not insist upon the members of the Petitioner society restoring the premises consistent with the last approved plans. The Petitioner and its members have thus successfully resisted the execution of the notices under Section 53(1) of the MRTP Act for the last five years by taking out various legal proceedings before the Civil Court and this Court.

11. In this Petition, initially, ad-interim relief was granted to restrain the BMC from taking any coercive action and enforcing the notices under Section 53(1) of the MRTP Act. However, after the learned Single Judge's order dated 16th February 2023 was pointed out to this Court, this Court accepted the statement made by the learned Senior Advocate for the Petitioner that the ad-interim relief would not apply to the structures which were the subject matter of learned Single Judge's order dated 16th February 2023. This 16th

February 2023 order was not annexed by the Petitioner Society along with the Petition memo.

12. Our order dated 21st June 2024, excluding Bhosale's structure from the protection enjoyed by earlier ad-interim orders, reads as follows:-

- “1. Stand over to 25th June 2024 at 2.30 p.m.*
- 2. Ad-interim relief granted earlier to continue till the next date.*
- 3. Though this ad-interim relief continued, Mr. Naik, learned senior counsel for the petitioner accepts that this protection will not extend to the structures which are subject matter in the order dated 16th February 2023 passed in Appeal from Order No.109 of 2023. These structures are described in paragraph No.7 of the order dated 16th February 2023 which notes that a large parking area on the first floor has been converted by the appellant/plaintiff into 23 rooms which are being used as a residential hotel. The order dated 16th February 2023 clearly states that any indulgence to permit the continuation of such activities will be against tenets of law and that this Court can not pass any order which would compound any illegality when the nature of the objected unauthorised structures was admitted on the part of the appellant/plaintiff.”*

13. Bhosale, aggrieved by the above order dated 21st June 2024, instituted Special Leave Petition (Civil) Diary No(s).27698 of 2024 before the Hon'ble Supreme Court. However, after some arguments, the learned counsel for Bhosale withdrew the SLPs with the liberty to move an appropriate application before this Court in the pending matter, including Writ Petition No.551 of 2024. Accordingly, the Hon'ble Supreme Court, by its order dated 28th

June 2024, dismissed the SLPs as withdrawn with liberty as prayed for.

14. Pursuant to the above liberty, Bhosale has filed Interim Application (L) No.20815 of 2024. Bhosale's impleadment was allowed, and Mr Dhond learned Senior Advocate for Bhosale, was heard at length on the reliefs applied for in the Interim Application.

15. The ad-interim protection granted in Writ Petition No.551 of 2024 was without considering the learned Single Judge's order dated 16th February 2023, firstly because this order was not annexed to the Petition. Secondly, this order was not pointed out at the time of granting the ad-interim relief. However, after this order was pointed out, the learned Senior Advocate for the Petitioner accepted that the ad-interim protection granted to all the unauthorised constructions in the said building could not extend to the constructions described in paragraph 7 of leaned Single Judge's order dated 16th February 2023. These structures involved the conversion of a large parking area on the first floor into a twenty-three rooms residential hotel.

16. The order dated 16th February 2023 clearly stated that any indulgence to such structures would be against the tenets of law and that this Court cannot pass any order which would compound any illegality when the nature of the objected unauthorised structure was admitted by Mr Bhosale. Learned Single Judge held that it was certainly not permissible for Mr Bhosale to undertake such large-scale commercial activity in an unauthorised manner.

17. Therefore, the ad-interim order granted earlier in this petition was continued after clarifying that this protection would not extend to Bhosale's unauthorised construction. This was more so because Bhosale's case was considered in detail by the Civil Court and the learned Single Judge in Appeal from Order No.109 of 2023. There was no question of the Division Bench of this Court taking any view contrary to that taken by the learned Single Judge in the order dated 16th February 2023. That order had attained finality, and it was not as if this Court was sitting in appeal over that order.

18. Bhosale, in his Interim Application (L) No.20815 of 2024, apart from seeking impleadment, has sought directions on the BMC to consider his application for regularisation on its own merits, either as a part of the Petitioner society's regularisation application or independently thereof. Mr Dhond submitted that Bhosale is prepared to file an independent application for regularisation. Still, directions should be issued to the BMC not to reject the same only on the ground that the same is not made by the Petitioner Society of which Mr Bhosale is a member.

19. Mr Dhond submitted that Bhosale and the other members of the society who were served with notices under Section 53(1) of the MRTP Act "sailed in the same boat" in the sense that there is no significant difference between them. He submitted that the allegation against the Petitioner concerns the illegal conversion of 3,500 sq. ft. of parking area into hotel rooms. He submitted that the other members of the Petitioner Society are also alleged to have consumed excess FSI to the extent of almost 1,00,000 sq. ft by making illegal constructions. He, therefore, submitted that either the society must be directed to include Bhosale in its application for

regularisation or Bhosale should be granted liberty to apply for regularisation independently, and the BMC must be restrained from rejecting such application only on the ground that the same is not moved through the society.

20. On due consideration of Mr Dhond's submissions, we think that there are good reasons for treating Bhosale's case separately. It is an admitted fact that Bhosale had instituted a civil suit to question BMC's orders under Section 53(1) of the MRTP Act. After failing to obtain a suitable interim order, Bhosale assailed the trial Court's order dated 18th January 2022, rejecting his Notice of Motion vide Appeal from Order No.109 of 2023.

21. By detailed order, the Appeal from Order No.109 of 2023 was disposed of by a learned Single Judge of this Court. Admittedly, this order dated 16th February 2023 has not been challenged by Bhosale and, therefore, will govern Bhosale's status qua BMC. This, according to us, is a good reason to treat Bhosale's case separately. As noted earlier, there is no question of passing any contradictory orders or orders which would conflict with the directions issued by the learned Single Judge in the order dated 16th February 2023. This is even more so because we endorse entirely the view taken by the learned Single Judge in the order dated 16th February 2023.

22. The learned Single Judge's order dated 16th February 2023 suggests that Bhosale had already applied for regularisation to BMC, but the applications were rejected for want of certain compliances. However, Bhosale contended that such rejections were not on merit but only for the want of certain compliances. Bhosale also submitted that most of the requirements were complied with, and only one or

two compliances were pending, which would be completed within a week from 16th February 2023. Based upon such statements and such assurances, the learned Single Judge, despite severely castigating Bhosale for the large-scale illegalities committed by him, granted Bhosale an opportunity to make all the deficit compliances with regard to the regularisation application submitted by him to the BMC within ten days from 16th February 2023 without seeking any further extension.

23. The Learned Single Judge directed the BMC to decide Bhosale's regularisation application in accordance with the law within a period of ten days from the complete compliance of the deficiencies by Bhosale as observed in the order. Learned Single Judge also clarified that in the event the regularisation application of Bhosale fails, the BMC would be permitted to proceed to take further appropriate action in accordance with the law. Accordingly, the Notice of Motion by which Bhosale had claimed for interim reliefs to restrain the BMC from executing its notice under Section 53(1) of the MRTP Act was dismissed. Rather, the learned Single Judge upheld the denial of interim reliefs to Bhosale by the trial Court.

24. Paragraphs 4 to 11 of learned Single Judge's order dated 16th February 2023 are quite relevant and are therefore transcribed below for the convenience of reference.

“4. Mr. Bhosale responding to paragraph 8 of the reply affidavit has drawn the Court's attention to rejoinder affidavit as filed on behalf of the appellant/plaintiff, to submit that the rejection as spoken by the Municipal Corporation in paragraph 8 is not a rejection on merits, as it is a computer generated

rejection on deficiency of certain documents. His contention is that considering the last such rejection, the Municipal Corporation has generated a 'Further Particular Letter'(FPA), addressed to the Architect of the appellant/plaintiff. The said letter is annexed to the affidavit filed on behalf of the Municipal Corporation at Page 458. The said letter has listed 16 items, which are required to be complied by the appellant/plaintiff so that all these documents are on record and appropriate decision on the same can be taken by the Competent Officer/Executive Engineer of the Municipal Corporation, on the retention/regularization application of the appellant/plaintiff.

5. *Mr. Bhosale, on instructions, has submitted that such compliances by furnishing all the particulars have been made by the Architect of the appellant/plaintiff. He says so referring to a chart which is annexed to the rejoinder affidavit at Page 480. He submits that almost all the compliances are submitted and there is a likelihood that one or two compliances are remaining which would also be completed within one week from today. Statement of Mr. Bhosale is accepted.*

6. *It is quite significant and as rightly pointed out on behalf of the Municipal Corporation that the appellant/plaintiff is repeatedly making proposals, however, complete proposals are not being made. Under the grab of a regularization proposal the unauthorized construction is sought to be used and or protected by the appellant/plaintiff. Making such proposals for regularization cannot be a continuous and an ongoing process. The appellant/plaintiff also needs to be serious and if he is really interested in pursuing such application. Thus, in the facts and circumstances of the case, as a matter of last opportunity, the appellant is permitted to comply with all the requirements to make his proposal effective and realistic. Let all compliances in that regard be achieved by the appellant/plaintiff within a period of ten days from today. The Competent officer of the Municipal Corporation shall take a decision on the said proposal of the*

appellant/plaintiff in accordance with law within ten days of the complete documents being submitted by the appellant/plaintiff as observed hereinabove.

7. It is clear from the notice of the Municipal Corporation, that the unauthorized construction as undertaken by the appellant/plaintiff and as objected by the Municipal Corporation is of a substantial nature. It appears that large parking area on the first floor has been converted by the appellant/plaintiff into 23 rooms which are being used as a residential hotel. This is certainly a brazen illegality as rightly noticed by the officers of the Corporation in issuing the notice in question. It was certainly not permissible for the appellant/plaintiff to undertake such large scale commercial activity and that too in an unauthorized manner. Thus, any indulgence to permit continuation of such activity would be against the tenets of law. The Court cannot pass an order which would compound any illegality and that too when the nature of the objected unauthorized construction is admitted on the part of the appellant/plaintiff, also by submitting the retention application.

8. Thus, in the above circumstances, the appellant/plaintiff is directed to forthwith cease and desist from using 23 rooms on the first floor of the premises as set out in the schedule to the notice from being used for any purpose whatsoever. Additionally the Court Receiver, High Court, Mumbai is appointed as Receiver in respect of 23 rooms, who shall immediately take action to seal these rooms so that till the application for regularization is decided, they are not put to any commercial use. This more particularly as it may not be within the control of the Corporation to monitor the illegal use of these 23 rooms by the appellant/plaintiff till the regularization application is decided and any user of these illegal rooms by the appellant/plaintiff would be a direct breach of the provisions of law.

9. *There is also an office on the first floor admeasuring 115 sq. mtrs., which according to the Municipal Corporation is also part of the first floor parking area and which is also unauthorized. However, Mr. Bhosale submits that regularization of the office is also subject matter of the application for regularization, as filed by the appellant/plaintiff. Mr. Bhosale would however contend that at the most, the office may be permitted to be used, which according to him, comprises of two cabins. Mr. Bhosale is agreeable that 23 rooms excluding the office cabins can be sealed and Court Receiver can take possession. Thus, only as a matter of indulgence and keeping open all contentions of the appellant/plaintiff as also the Municipal Corporation and only as a stop-gap arrangement, the appellant/plaintiff is permitted to use two cabins as office, as it is stated that there are staff members of appellant/plaintiff who are required to utilize the office premises.*

10. *The above discussion clearly show that there is no dispute that the objected construction is an unauthorized construction and considering the nature of unauthorized construction, the learned trial Judge has rightly passed the impugned order taking into account the rival contentions and the materials as placed on record, observing that a prima face case was not made out by the appellant/plaintiff for any temporary injunction to be granted.*

11. *In the lights of the above discussion, the Appeal from Order is accordingly disposed of by the following order :*

(i) *The appellant/plaintiff shall make all the deficit compliances in regard to the regularization application as submitted to the Municipal Corporation, within a period of 10 days from today. There shall not be any further extension in any manner whatsoever, as since 2019 the appellant's applications are rejected;*

(ii) *The Court Receiver, High Court, Bombay, is appointed as a receiver to seal the unauthorized rooms (except two office cabins) as described in the Schedule to the*

notice issued under section 53(1) of the MRTP Act (Page 171 of Paper book). A better copy with the sketch shall be made available to the Court Receiver. The Court Receiver is directed to hold a meeting on 17 February, 2023 at 3.00 p.m., which be attended by the concerned officers of the Municipal Corporation as also the representatives of the appellant/plaintiff to comply the present directions. The rooms so sealed shall remain in the lock and seal of the Court Receiver and shall be subject to the further orders to be passed by this Court on the decision to be taken by the Municipal Corporation on the regularization proposal of the appellant/plaintiff.

(iii) The appellant/plaintiff is directed to deposit in the office of the Court Receiver an amount of Rs.50,000/- as an advance for fees, expenses etc which may be incurred by the Court Receiver.

(iv) The Court Receiver is permitted to take Police help from the local police station in the vicinity, which is either the Chembur or Govandi Police Station. The officer in-charge of the concerned Police Station shall provide adequate help to the Court Receiver to execute the present order.

(v) The Sheristedar of this Court shall inform the Office of the Court Receiver of the present order for further appropriate steps to be taken.

(vi) The parties shall cooperate with the Court Receiver to execute the order at the site, which shall be at 3 p.m. on 17 February, 2023. In the event, the appellant/plaintiff is not cooperating, the Court Receiver is permitted to take forcible action and seal the objected premises.

(vii) A compliance report be made by the Court Receiver before this Court on 20 February, 2023 at 2.30 p.m.

(viii) In the meantime, the Municipal Corporation shall proceed to decide the regularization application of the appellant in accordance with law within a period of 10 days from the complete compliance of the deficiencies by the appellant/plaintiff as observed above.

(ix) In the light of the above directions, no interference is called for in the impugned order. In the event, the regularization application of the appellant/plaintiff fails, the Municipal Corporation is permitted to proceed to take further appropriate action in accordance with law.”

25. Since there is a binding order dated 16th February 2023 governing the positions of Bhosale and BMC, it is only appropriate that Bhosale was excluded from the benefits of the ad-interim order obtained by the Petitioner Society from us earlier. If we were not to exclude Bhosale, then our ad-interim order would conflict with the binding directions in the learned Single Judge’s order dated 16th February 2023. Bhosale, by such stratagems, would gain something that was specifically denied to him by the Learned Single Judge’s Order dated 16th February 2023, which has already attained finality.

26. From the learned Single Judge’s order dated 16th February 2023, it is quite clear that Bhosale had held out that his application for regularisation was already filed, and only about two compliances were pending. Bhosale also held out to the Court that these two compliances would be completed within a week from 16th February 2023. If, according to Bhosale, the BMC, despite Mr Bhosale completing the balance two compliances, has not disposed of the application for regularisation in accordance with the law, then it is for Bhosale to take out appropriate proceedings for redressal of such grievance. However, we are satisfied that Bhosale cannot insist

on any relief in this Petition, including the relief that the Petitioner society must be compelled to include Bhosale's name in their application for regularisation. Any such direction would amount to granting Bhosale reliefs, which were far in excess of and possibly in conflict with the limited reliefs granted to Bhosale by the learned Single Judge's order dated 16th February 2023.

27. If Bhosale's application is still pending and if Bhosale has already cleared two compliances within ten days from the learned Single Judge's order dated 16th February 2023, Bhosale could have always approached the learned Single Judge complaining of non-compliance with the directions in the order dated 16th February 2023. However, Bhosale is very ambiguous about all this. Instead, the attempt is to join the Petitioner Society for regularisation, when Mr Naik, learned Senior Advocate for the Petitioner Society, has made it very clear at the outset that the Petitioner Society was not holding any cudgels on behalf of Bhosale and supporting the unauthorised constructions undertaken by him of converting twelve parking lots into hotel rooms used for commercial purposes. The order dated 16th February 2023 is a self-operative order that has attained finality. Bhosale cannot now aspire to receive reliefs that conflict with those granted or refused by the said order through these proceedings. Such an attempt, though ingenious, is misconceived.

28. Incidentally, Naik pointed out that the society was approved as the owner by the BMC only on 25th January 2024. He referred to the document at Exhibit 'A' to the rejoinder filed on 21st June 2024. This means that the Society came into the picture almost a year after learned Single Judge's order dated 16th February 2023.

Suppose Bhosale has missed the timeline set out in the learned Single Judge's order dated 16th February 2023. In that case, Mr. Bhosale cannot, by impleading in the present Petition, join in the society's application for regularisation and seek further directions regarding regularisation.

29. Accordingly, there is no question of granting any relief in terms of prayer clause (b) of Interim Application (L) No.20815 of 2024. This relief is, therefore, rejected. Suppose Bhosale has any grievance about non-compliance by the BMC of the directions in the learned Single Judge's order dated 16th February 2023. In that case, it is for Bhosale to agitate such grievances before the appropriate forum independently.

30. In so far as the Petitioner Society is concerned, Mr Naik learned Senior Advocate for the Society, offered that the Society would now apply for regularisation for and on behalf of the members who have received notices under Section 53(1) of the MRTP Act by excluding Bhosale's premises which form the subject matter of Appeal from Order No.109 of 2023 and learned Single Judge's order dated 16th February 2023 pronounced in those proceedings.

31. Mr Naik submitted that the Society has already applied for fire NOC and paid Rs. 32,84,242/- towards the fees. He submitted that some directions may be issued to the BMC to consider and dispose of, in accordance with law, the application for fire NOC, which is an essential requirement to apply for regularisation within a time-bound period. Mr Naik submitted that once fire NOC is obtained, the Petitioner Society undertakes to submit its regularisation application, duly completed along with fire NOC, to

the BMC within one week from the date of receipt of such fire NOC from the Chief Fire Officer.

32. Ms. Geeta Shastri, on 4th July 2024, and Mr. Milind More (on the previous dates) pointed out that some of the Petitioner Society members had filed suits and other proceedings to challenge notices under Section 53(1) of the MRTP Act. They pointed out that if such members were now joining the regularisation application proposed to be made by the Petitioner Society, then such members must not, at the same time, pursue their independent proceedings before the Civil Court or any other Court. This concern is quite legitimate.

33. To address the above contention, Mr Naik, on instructions submitted that the members of the Petitioner society (except Mr Bhosale) who had independently challenged Section 53(1) of the MRTP Act notices by filing proceedings either in this Court or in the City Civil Court, were agreeable to withdraw the same now that the Petitioner Society was pursuing the application for regularisation for and on their behalf. He also placed on record letters of individual members who have undertaken to withdraw their respective proceedings filed either in this Court or in the Civil Court. He submitted that the proceedings in this Court would be withdrawn immediately and the proceedings before the City Civil Court would be withdrawn in due course since the City Civil Court insists on the presence of the parties at the time of withdrawal.

34. Considering the above submissions made by Mr Naik and by accepting the undertaking that the members (excluding Mr Bhosale) who have independently challenged Section 53(1) of the MRTP Act

notices either in this Court or in the Civil Court would withdraw their respective proceedings, we direct the BMC to dispose of the society's application for fire NOC expeditiously. The withdrawals in the Civil Courts " in due course " is clarified to mean two to three weeks. The orders on withdrawals must be placed before the BMC within four weeks from today.

35. Ms Shastri, on instructions submitted that within a week from the pronouncement of the reserved order, if the Court were inclined to grant the Society opportunity to pursue regularisation, the BMC (Fire Department) would inform the Petitioner of any lacunae in their application seeking Fire NOC and grant the Petitioner Society some reasonable time to remove those lacunae. If those lacunae are removed within the time granted by the BMC , then the BMC will dispose of the applications for fire NOC within fifteen days from the date of removal of such lacunae.

36. If the Petitioner Society succeeds in obtaining the fire NOC, then, consistent with its undertaking, the Society must file an application for regularisation along with the fire NOC and all other requisite compliances within **ten days** of receiving the fire NOC. In fact, Mr. Naik had stated that such an application would be filed within a week of receiving the fire NOC. The Society must ensure that this application is complete in all respects. Because in this case (particularly from the Bhosale experience), we have noticed that incomplete applications for regularisations are filed, and still demolition or restoration is resisted on the grounds of pendency of the incomplete regularisation applications.

37. Suppose the Petitioner Society files a duly completed application for regularisation without any pending compliances. In that case, the BMC must dispose of it as expeditiously as possible and, in any event, within two months from the date of its receipt.

38. The BMC must communicate its decision to the Petitioner Society. Until this application for regularisation is disposed of, the BMC should not enforce its notices under Section 53(1) of the MRTP Act. However, suppose the society fails to clear the compliances regarding fire NOC within the time prescribed or fails to apply for regularisation within ten days of the receipt of fire NOC. In that case, the BMC should proceed to execute its Section 53(1) of the MRTP Act notices at the earliest now that this matter has lingered since 2019.

39. Similarly, suppose the Petitioner Society files its application for regularisation within ten days from the receipt of fire NOC (with all compliances). In that case, until such an application is disposed of, the BMC should not enforce its notices under Section 53(1) of the MRTP Act. Suppose the BMC rejects the application for regularisation on any ground, including the ground that such application was incomplete or not backed by necessary documents. In that case, the BMC should not enforce its Section 53(1) of the MRTP Act notices for a period of two weeks from the date of communication of such a decision to the Petitioner society. There would be no necessity of communicating this decision to the individual members of the Petitioner society.

40. If there is no legal impediment, the notices under Section 53(1) of the MRTP Act should be executed as expeditiously as

possible since the members of the Petitioner Society have succeeded in stalling demolitions or restoration since 2019 in spite of the massive scale of the illegalities involved. Once again, it is clarified that there has been no interim relief protecting Bhosale's premises since 21st June 2024. The order dated 21st June 2024 was challenged by Bhosale before the Hon'ble Supreme Court, but the same was not interfered with. Therefore, nothing in this order should be construed as protection to Bhosale's illegal premises.

41. Our direction is only to consider the Petitioner's application (by excluding Bhosale's premises) for regularisation, which means that such an application has to be considered in accordance with the law and on its own merits. We have not issued any direction to either grant or reject the regularisation. These are matters which will have to be considered by the BMC in accordance with the rules and regulations as applicable. However, our anxiety is that the Petitioner or its members cannot, after having put up large-scale illegal constructions or having made alterations which most of them are using for commercial purposes, delay the execution of the demolition notices and restore the structure as per the last sanctioned plan, even though the unauthorised constructions or alterations put up by them do not qualify for regularisation or on the ground of pendency of regularisation applications.

42. This is yet another case where parties make large-scale illegal constructions and then stall action on the grounds of pendency of regularisation applications. The applications are delayed or filed incompletely. The blame is sought to be passed upon by several authorities for the delay in filing regularisation applications. The undue advantage is sought to be taken of the tardy municipal

processes. All this while the illegal constructions are exploited commercially. The parties behave as if it is their right to put up illegal constructions or largely deviate from the sanctioned plans, confident that their violations would not be detected or be overlooked for obvious considerations. After all this, such parties litigate and stall coercive action by citing the non-disposal of regularisation applications. The BMC is also not vigilant enough to act against such illegalities with promptitude. In this case, the BMC has failed and neglected to adhere to the provisions of Building Regulations under Chapter XII of “The Mumbai Municipal Corporations Act, 1888”, more particularly Sections 344A, 350 to 353B and 354A, Regulations 5 to 8 in the Development Control Regulations, 1991 and Regulations 9 to 12 in the Development Control Regulations, 2034 to prevent such situations.

43. The Writ Petition No. 551 of 2024 and the Interim Application No. 20815 of 2024 are disposed of with the above directions and in the above terms. There shall be no order for costs.

44. All concerned must act on an authenticated copy of this order.

(Kamal Khata, J)

(M. S. Sonak, J)