

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

**WRIT PETITION (LODG.) NO. 1249 OF 2024
WITH
WRIT PETITION NO. 1294 OF 2024**

Percept Finserve Private Limited } **..Petitioner**

V/s.

The Municipal Corporation for
Greater Mumbai } **..Respondent**

Mr. V.A. Thorat, *Senior Advocate with Mr. Shobhit Shukla i/by. Mr. Ashok R. Pande, for the Petitioner.*

Mr. Sagar Patil, *for M.C.G.M.-Respondent.*

Mr. Bhoir, Assistant Engineer, G/S. Ward, present.

CORAM : SANDEEP V. MARNE, J.

Dated : 23 April 2024.

P.C. :

1) The challenge in the present petitions is to the following notices/orders.

(i) Notice dated 9 July 2022 issued under the provisions of Section 354A of the Mumbai Municipal Corporation Act, 1888 in respect of the alleged ongoing construction of mezzanine floor on second floor

level, erection of roof slab and construction of two rooms on the terrace without obtaining prior permission;

(iii) Speaking Order dated 3 October 2023 by which the Assistant Municipal Commissioner, G-South Ward held that the work of structural repairs and reconstruction of slab above second floor was carried out by Petitioner without obtaining any prior permission and accordingly request for withdrawal of the notice dated 9 July 2022 was rejected. By this speaking order, the Assistant Municipal Commissioner granted liberty to the Petitioner to submit a proposal to the Building Proposal Department and obtain necessary permission for repairs/reconstruction of the notice structure.

(iii) decision of Building Proposal Department dated 23 November 2023 rejecting the proposal for carrying out repairs to the structure; and

(iv) speaking order dated 9 January 2024 issued in pursuance of rejection of proposal for repairs and directing Petitioner to demolish the notice structures described in the Notice dated 9 July 2022.

2) I have heard Mr. Thorat, the learned senior advocate appearing for the Petitioners and Mr. Patil, the learned counsel appearing for M.C.G.M.

3) After having heard the submissions of the learned counsel appearing for the parties, it appears that the entire controversy revolves on correctness of the decision taken by the Building Proposal Department on 23 April 2023 rejecting the proposal for carrying out repairs to the notice structure. It is common ground that in the event of Building Proposal Department sanctioning the proposal for proposed repairs to the notice structure, the Notice dated 9 July 2022, as well as speaking Orders dated 3 October 2023 and 9 January 2024 would be rendered nugatory. In that view

of the matter, I have gone through the reasons recorded by the Building Proposals Department for rejecting Petitioner's proposal for carrying out repairs to the notice structure. It appears that the proposal is processed through a software on M.C.G.M.'s web portal and has been rejected on 23 November 2023 making following remarks :

Remarks : Gentleman, The proposal is submitted for regularization of fire gutted structure with huge BUA under section 342 as miscellaneous proposal. Since No approval plan or assessment record prior to datum line of 1961-62 is submitted hence the authenticity of the structure cannot be determined. Kindly note that the permission for reconstruction of building destroyed by fire or which have collapsed or which have been demolished under lawful manner is issued as per regulation 33(6) of DCPR 2034. However, the structure under reference exists on the Cotton Mill land, hence, the proposal has to be submitted considering Regulation 35 of DCPR 2034.

4) Perusal of the remarks of the Building Proposals Department for rejection of the proposal would indicate that the proposal submitted by the Petitioner is treated as '*miscellaneous proposal*' under Section 342 of the Mumbai Municipal Corporation Act, 1888. This is done possibly because Petitioner is not seeking permission for erection of a new building. What is sought is mere permission for carrying out repairs to the structure destroyed on account of incident of fire. However, following three reasons appear to have been recorded for rejection of the proposal :

(i) that Petitioner failed to submit any document showing existence of the structure prior to the datum line of 1961-62, on account of which, the authenticity of the structure cannot be determined.

(ii) that the proposal was required to be processed as per the provisions of Regulation 33(6) of DCPR, 2034.

(iii) that since the structure's existence is on cotton mill land, the proposal had to be submitted considering the provisions of Regulation 35 of DCPR, 2034.

5) I am of the view that all the three reasons recorded by the Building Proposals Department for rejection of Petitioner's proposal, apart from being wholly erroneous, indicate total non-application of mind. Firstly, the building has been constructed in the year 1975. It is Petitioner's contention that construction of the building is after procuring necessary development permission from the Planning Authority. If this is Petitioner's case, there is no question of proving existence of the structure prior to the datum line of 1961-62. The datum line is relevant only in respect of those structures for which development permission is not obtained. If the Petitioner is able to demonstrate that the structure has been constructed after securing development permission, there is no necessity of proving existence of the structure prior to the datum line of 1961-62. Mr. Patil joins issues with Mr. Thorat on the aspect of construction of the structure after obtaining development permission. According to Mr. Patil, the plan on which reliance is placed by the Petitioner is not a sanctioned development permission. In my

view, this is something which needs to be decided by M.C.G.M. Perusal of the first reason recorded in the decision dated 23 November 2023 would indicate that no cognizance is taken in respect of the plan produced by the Petitioner. Therefore, in absence of any definitive finding recorded in the decision dated 23 November 2023 that the plan relied upon by the Petitioner is not a development permission, it is not possible for this Court to entertain submission on behalf of M.C.G.M. and to totally ignore the plan relied upon by the Petitioner. This Court is not supposed to hold an inquiry as to whether the plan relied upon by Petitioner is sanctioned plan or not, especially when the impugned order does not hold so. In my view, therefore the Municipal Corporation will have to take into consideration, the documents relied upon by the Petitioner for arriving at a definitive conclusion as to whether the structure has been constructed in accordance with the development permission or not. For that purpose, the impugned decision of the Building proposals Department is required to be set aside and Petitioner will have to be granted liberty to produce all the relevant documents before the Municipal Corporation.

6) The second reason for rejection is the reference to the provisions of Regulation 33(6) of DCPR 2034, which deals with reconstruction of buildings destroyed by fire or which have collapsed or which have been demolished under lawful order. Admittedly, the notice structure has not been demolished or completely destroyed by fire, which required reconstruction of the entire building. It continues to stand. What is sought is mere repairs to

the said structure. In my view, therefore Regulation 33(6) may not have any application to the facts of the present case.

7) The third reason for rejection of Petitioner's proposal is reliance on Regulation 35 of DCPR, 2034 which deals with development or redevelopment of the lands of cotton textile mills. Here again, I am unable to comprehend as to how proposal submitted by the Petitioner for carrying out repairs under Section 342 of the Act, needs to be processed as a development or redevelopment of Cotton Textile Mill land.

8) Consequently, I find none of the reasons recorded for rejection of the proposal on 24 November 2023, to be cogent. The impugned decision of the Municipal Corporation suffers from the vice of non-application of mind. Resultantly, the order dated 23 November 2023 is required to be set aside and proposal submitted by the Petitioner is required to be reconsidered in the light of the observations made above. Since the decision dated 23 November 2023 is being set aside, the Municipal Corporation cannot act on Notice dated 9 July 2023 or speaking Orders dated 3 October 2023 and 9 January 2024 till the proposal of the Petitioner is reconsidered and decided afresh.

9) I therefore proceed to pass the following order:

(i) The decision dated 23 November 2023 of Building Proposals Department of Municipal Corporation is set aside.

(ii) The proposal submitted by the Petitioner shall stand restored and shall be decided afresh in the light of the observations made above.

(iii) The Petitioner shall be at liberty to produce all documents with a view to demonstrate that construction of building was in accordance with development permission.

(iv) Considering the fact that the notice structure has been partly destroyed by fire, it is appropriate that the proposal of the Petitioner is decided in an expeditious manner, preferably within a period of four weeks from today.

(iv) Till the proposal of the Petitioner is decided by the Building Proposal Department, and for a period of two weeks thereafter, Notice dated 9 July 2022, as well as Speaking Orders dated 3 October 2023 and 9 January 2024 shall not be acted upon.

10) With the above directions, the Writ Petitions are partly allowed and disposed of.

SANDEEP V. MARNE, J.