

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 18978 OF 2024**

Malchand Daga & Ors ...Petitioners
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondents

**WITH
WRIT PETITION NO. 1061 OF 2024**

Nareshkumar Shantilal Jain ...Petitioner
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondent

**WITH
WRIT PETITION NO. 1020 OF 2024**

Nileshkumar Shantilal Mehta ...Petitioner
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondent

**WITH
WRIT PETITION (L) NO. 19521 OF 2024**

Kanhaiyalal Rawal ...Petitioner
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondent

Mr Amogh Singh, i/b Kaustubh Patil, for the Petitioner in all Writ

Petitions.

Mr Mayur Khandeparkar (appeared online), *with Roshan Sawant, for Respondent No. 4.*

Mr Nitin Gaware Patil, *with Prerna Sethia, i/b Sandeep Singh, for Respondent No. 5 (Developer) in WP/1061/2024, WPL/18978/2024 & WP/1020/2024.*

Mr GS Godbole, Senior Advocate, *with S Tondwalkar, for the Respondent-BMC.*

Mr S Rajaram Sonawane, *Assistant Engineer (B&F), i/c, F/South Ward, present.*

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

DATED: 19th July 2024

PC:-

1. Heard learned Counsel for the parties.
2. The affidavit in the Reply filed by the BMC has been accepted. Copies were served in advance. Learned counsel for the parties agree that by common order can dispose of all these Petitions because the challenge in all these Petitions are identical.
3. In all these Petitions, the challenge is to notices and the speaking orders after considering the Petitioners' objections to such notices under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP") by the BMC.
4. Mr Singh, learned Counsel for the Petitioners, submits that none of the constructions/deviations were undertaken by any of the Petitioners. He submits that the Petitioners bought the premises from the developer (Respondent No. 5) and have been using the

premises since such purchase. He, therefore, submits that such constructions and/or alleged deviations, if any, are undertaken by the developer for which the Petitioners should not be made to suffer or held responsible.

5. Mr Singh submitted that the peculiar position of this case is that constructions and/or deviations that are alleged to be illegal or unauthorised are carried out in relation to practically every single apartment of the building. He submits that this indicates that it is the developer who has carried out such constructions and/or deviations, and the Petitioners are in no manner responsible for the same.

6. Mr Singh further states the Corporation has already regularised some such construction or deviations. He states that Petitioners Nos. 22 and 23 in Writ Petition No. 1528 of 2024 are the beneficiaries of such regularisation. He, therefore, submits that this Petition should be admitted and interim reliefs granted.

7. Mr Godbole, the learned Senior Advocate for BMC, submits that there is no infirmity whatsoever in the impugned notices and orders made after due compliance with principles of natural justice and fair play. He submits that the only grievance raised by the Petitioners, in response to the notices and, for that matter, in these Petitions, is that they have not carried out these constructions/deviations but that the developer has carried out such constructions/deviations. Mr Godbole submits that this is an

irrelevant circumstance, and based on such a ground, there is no question of interfering with the impugned orders and notices.

8. Mr Godbole submits that the Petitioners' belated and oral plea of regularisation implies an admission about the illegality of the constructions and/or deviations. He submitted that there is no question of regularisation construction/deviation contrary to applicable rules and regulations.

9. For all the above reasons, Mr Godbole submits that these Petitions may be dismissed.

10. Mr Nitin Gaware Patil, learned counsel for the developer, submits that the developer has not carried out any illegal constructions/deviations and, therefore, contentions on behalf of the Petitioners cannot be accepted.

11. Mr Khandeparkar, who appeared on behalf of the society (Respondent 4), submitted that the society has already filed the Suit invoking the provisions of the Maharashtra Ownership of Flats Act 1963 and is pursuing the matter.

12. Rival contentions now fall for our determination.

13. From the contentions raised before us and the pleadings in the Petition, we find that the only challenge to impugned notices and orders is that constructions/deviations were undertaken not by the Petitioners themselves but by the developer. In support of this

contention, Mr Singh emphasises that most of the constructions/deviations are common to practically all the apartments in the building. He submitted that from this, it should be inferred that the developer was responsible for carrying out such constructions/deviations.

14. The question is not whether the Petitioners or the developer from whom they purchased these premises have carried out these constructions and/or deviations. The question is whether such constructions/deviations are carried out after obtaining necessary permissions from the Corporation and whether such constructions/deviations are at all permitted under the rules and regulations that govern such constructions.

15. No argument was advanced to justify the legality of the construction or to submit that such constructions were undertaken after obtaining necessary permissions from the Corporation in terms of relevant rules and regulations, including the MRTP Act and the DCR, as applicable. Instead, without any substantial pleadings in the Petition, across the bar, it was suggested that the Petitioners be permitted to apply for regularisation. Even here, orally, a request was made that the Corporation be directed not to insist upon any intervention or involvement of the developer or any NOCs from the developer.

16. From the contentions raised before us, it is apparent that the Petitioners have made no case for quashing the impugned notices and orders. The impugned notices and orders could have been

quashed provided the Petitioners could demonstrate that lawful permissions from the Corporation backed the constructions. No such case is pleaded. The corporation also submits that all these constructions and deviations were without obtaining any permissions from the Corporation.

17. The Petitioners, in paragraph 3 of Writ Petition (L) No. 18978 of 2024, have pleaded that a full Occupation Certificate (“OC”) for the building was issued on 13th September 2019. Before that, a part of the OC was also granted on April 15th, 2017. The Petitioners, in paragraph 11, have further pleaded that an activist had alleged collusion between the Corporation officials and the developer and sought investigations. Based on this, the BMC inspected the premises and issued notices under Section 53(1) of the MRTP Act. During this inspection, the BMC is alleged to have found that there was unauthorised shifting of a door into a common passage, thereby including/enclosing a common passage in the flat areas. Mr Godbole, the learned Senior Counsel for the Corporation, also pointed out that there were unauthorised slabs in void areas and unauthorised utilisation of service slabs in duct areas. Mr Godbole submitted that such illegalities are serious and not even regularisable.

18. There are no pleadings whatsoever regarding any plea for regularisation. Nothing before us suggests that any irregularisable deviations or constructions were, in fact, regularised by the Corporation. In any event, it is well settled that there can never be any equality of irregularities in such matters.

19. In this Petition, we cannot adjudicate the disputes between the Petitioners and the developer or between the society and the developer. However, such disputes cannot be grounds for interfering with the impugned notices or orders. Since we are satisfied that the impugned notices and orders are not illegal, we decline to entertain these Petitions. These Petitions are liable to be dismissed and hereby dismissed. There shall be no order for costs.

20. At this stage, learned Counsel for the Petitioners requests for continuation of interim relief, which was granted on 16th January 2024. Mr Godbole points out that this interim relief was granted when there was no representation on behalf of the BMC. Further, we note that since this is a case of enclosing common passages and common amenities, which are now ordered to be removed, it would not be in the public interest to continue such interim relief any further. It is not as if the Petitioners' residence per se will be affected in any manner. Accordingly, the prayer for the continuation of interim relief is denied.

(Kamal Khata, J)

(M.S. Sonak, J)