

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.3011 OF 2020**

Kangana Ranaut ... Petitioner
versus
Municipal Corporation of Gr. Mumbai & Ors. ... Respondents

Mr. Rizwan Siddique i/by Siddique and Associates, for Petitioner.
Mr. A.Y.Sakhare, Senior Advocate with Mrs. Rupali Adhate, for MCGM.
Mr. Vinayak Vispute, Asstt. Commissioner, H/W Ward, present.
Mr. Bhagyawant Late, Executive Engineer, H/W Ward present.

**CORAM: S.J. KATHAWALLA &
R. I. CHAGLA, JJ.**

DATE: 9th SEPTEMBER, 2020

P.C.:

1. The above Writ Petition is not on Board. The Associate of this Court has today at 11.30 a.m., placed before us a Praecipe along with an unaffirmed copy of the Writ Petition on behalf of the Petitioner, stating therein that as a result of a fall-out with certain influential people operating in the Administration and the Government, she has received a Notice dated 7th September, 2020, under Section 354A of the Mumbai Municipal Corporation Act, 1888 ('the Act') from the Executive Engineer, H/West Ward of the Municipal Corporation of Greater Mumbai ('MCGM'), claiming that he has been satisfied that the Petitioner has unlawfully commenced, undertaken or carried out erection of building/erection of work, as described in the Schedule to the said notice. The said Notice further calls upon the Petitioner to

produce documentary evidence proving authorization of the unauthorized work mentioned in the Notice; to stop the erection of the said building/execution of the said work forthwith and to produce permission, if any, obtained from the MCGM, within 24 hours from the service of the Notice. The Notice also provides that if the Petitioner fails to produce within 24 hours, the permission of MCGM to carry out the said works, MCGM shall under Section 354A of the Act, without any further notice, cause the said building or work to be pulled down at the risks and cost of the Petitioner.

2. It is further stated in the Praecipe that since 24 hours have elapsed, the Corporation is seeking to demolish the Petitioner's residence today itself and therefore, the Court should restrain the Corporation from demolishing the premises of the Petitioner, who is currently out of Maharashtra and is expected to be in Mumbai today.

3. In view of the urgency and also in view of the fact that the Corporation has filed a caveat in this Court, the matter was directed to be placed at 12.30 p.m. today and the Advocate for the Petitioner was asked to give notice to the MCGM.

4. Before we record as to what transpired before us at 12.30 p.m., we feel it necessary to set out a few facts in the matter:

4.1 The Petitioner is in use, occupation and possession of Bungalow No.5, Chetak Row House, 41, Nargis Dutt Road, Pali Hill, Bandra (W), Mumbai – 400 050

(‘the said Premises’).

4.2 On 8th September, 2020 at 10.03 a.m., MCGM pasted a Notice dated 7th September, 2020 on the outer door of the said Premises. The Notice under Section 354A of the Act, was addressed to the Petitioner by the Executive Engineer, H/W Ward, stating that the Executive Engineer is satisfied that the Petitioner has unlawfully commenced/is carrying out the erection of work described in the Schedule to the said Notice at the said Premises.

4.3 Clauses (i) to (vii) of the said Notice are reproduced hereunder :

“1. Schedule (Description of work)

Ongoing renovation and finishing work to the unauthorized portion at above premises which is beyond approved BCC plan bearing No.CE/4349/BSI/AH/dated 07.03.1979.

However, during inspection following works are observed beyond approved BCC Plan bearing No. CE/4349/BSIL/AH/ dated 07.03.1979.

- a) Toilet unauthorisedly converted into office cabin on ground floor.*
- b) Unauthorized kitchen is constructed in store room on ground floor.*
- c) New toilets are unathorisedly constructed beside staircase inside store and another in parking area on ground floor.*
- d) Unauthorized Pantry is constructed on ground floor.*
- e) Unauthorized room/cabin with wooden partition made in living room on first floor.*
- f) Unauthorized meeting room / cabin with wooden partition made in pooja room on first floor.*
- g) Unauthorized construction of toilets in open chowk area with brick*

masonry walls and slab on first floor.

h) Unauthorized horizontal extension of slab at front side admeasuring 2'6" on first floor.

i) Staircase orientation is changed on second floor.

j) Balcony found enclosed in habitable area by removing partition walls on second floor.

k) Unauthorized horizontal extension of slab at front side admeasuring on 3' on second floor.

l) Bedroom of adjoining bungalow no.4 is merged into bungalow no.5 by removing partition wall on second floor.

m) Toilet of adjoining bedroom (i.e. bungalow no.4) is found removed and same area is used as habitable area on second floor.

n) Position of main entrance gate is found changed.

You are hereby direct to produce documentary evidence proving authorization of above mentioned works.

2. I hereby directed you to stop the erection of the said building / execution of the said work forthwith.

3. If you are in possession of any permission approved by the competent authority in favour of erection of the building or execution of the work, you are hereby directed to produce permission within 24 hours from the service of this notice, in my office.

4. If you fail to stop the execution of work forthwith or if stopped and fail to produce permission within 24 hours, I shall under Section 354(A) and in exercise of powers and functions conferred upon me as aforesaid without any further notice cause the said building or work to be removed or pulled down, at your risk and cost.

5. Further note that you and / or any person directing / carrying out such

erection / work shall be removed by Police Officer from the place where the building is being erected or work is being executed.

6. And that any material, machinery, equipment, device or articles used in process of erection of building or execution of work will be caused to be removed without any further notice at your risk and cost.

7. Sketch (Not to the Scale)”

4.4 The sketch shown in the Notice is extremely unclear and the ‘unauthorized’ works cannot at all be seen in this sketch.

4.5 The Advocate for the Petitioner immediately served a Reply-Letter dated 8th September, 2020 to the Executive Engineer (B&F) H/W Ward and recorded therein that the allegations made by the MCGM in the said Notice are false and the same shall be forthwith dealt with by the Petitioner, who is expected to arrive in Mumbai on 9th September, 2020 and requested for a minimum of 7 days to respond and address the concern raised in the said Notice. By the said Reply-Letter, MCGM was called upon not to misuse its dominant position, “*to cause prejudice to the Petitioner with any hidden agenda coupled with ulterior motives*”.

4.6 On 8th September, 2020, the MCGM filed its Caveat before this Court under Section 148-A of the Code of Civil Procedure, recording therein that the Petitioner is likely to file a Writ Petition before this Court challenging the Notice dated 7th September, 2020 issued by the MCGM to the Petitioner, pertaining to the said Premises and “LET NOTHING BE DONE in the above mentioned matter unless

prior notice is given to the Corporation.” The MCGM also filed the Vakalatnama of its Advocate along with the said Caveat.

4.7 The above Writ Petition was drafted and circulated before this Court today at around 11.30 a.m., when as stated hereinabove, the matter was directed to be placed before us at 12.30 p.m.

5. The matter was called out at 12.30 p.m. However, for the first ten minutes, none appeared for the MCGM despite notice being served on them by the Petitioner’s Advocate. In the meantime, the Advocate for the Petitioner informed the Court that today morning at around 11.00 a.m., the MCGM moved its entire machinery and in the presence of several police officers, started carrying out the job of demolition by use of heavy machines and by now 40% of the said Premises is already demolished by the MCGM. Thereafter, an in-house Advocate of the MCGM appeared and informed the Court that they do not have a copy of the Writ Petition. The Advocate for the Petitioner informed the Court that a copy of the Writ Petition has been served on the MCGM. This Court inquired from the Advocate for the MCGM whether she at least had a copy of the impugned Notice issued by the Corporation to the Petitioner. The answer given was in the negative. When this Court inquired as to who is instructing her in the matter, she informed the Court that none of the Officers of the MCGM are present with her. Since the Court was of the view that the MCGM is trying to waste the time of the Court and in the meantime complete the demolition of the said

Premises, the Advocate for MCGM was orally instructed by the Court to forthwith inform the Municipal Commissioner that the Court has directed the MCGM to forthwith stop the demolition work, in the light of today's hearing pending before the Court. Since no clear assurance was coming from the Advocate that the Municipal Commissioner was so informed, the Court Associate at our instance tried to call up the Municipal Commissioner, whose cellphone was continuously switched-off. Ten minutes thereafter, the in-house Advocate for the Corporation informed the Court that the directions of this Court were conveyed to the Municipal Commissioner. About 15 minutes thereafter, Shri Sakhare, Senior Advocate, for MCGM appeared before the Court through video-conferencing. In response to a query by the Court, he informed the Court that he too is not having a copy of the Writ Petition as well as copy of the impugned Notice and that the Officers of the Corporation are not with him since he is appearing from his residence.

6. We find the above conduct of the MCGM highly deplorable, more so since the MCGM was well aware that a Writ Petition would be filed by the Petitioner before this Court at any time, and an application seeking urgent orders will be moved by the Petitioner, and MCGM had therefore filed a Caveat before this Court. We therefore, informed Senior Advocate Shri Sakhare that such conduct on the part of the MCGM is totally unacceptable to the Court. However, Shri Sakhare immediately arranged to bring the Assistant Municipal Commissioner as well as the Executive Engineer (B&F)

of H/W Ward of MCGM online to answer the queries raised by the Court.

7. In response to the queries put to the Assistant Municipal Commissioner, H/W Ward as well as the Executive Engineer, they have informed the Court as follows:

7.1 That on 5th September, 2020 i.e. Saturday, the Building Mukadam whilst he was in the H/West Ward, noticed some work going on in the said Premises and also certain debris lying outside the said Premises.

7.2 The Mukadam informed about the same to the Assistant Engineer (B&F) of the MCGM.

7.3 The Assistant Engineer (B&F) of the MCGM, who is the Field Officer, informed about the same to the Designated Officer, (B&F), who is the Executive Engineer of H/W Ward of the Corporation.

7.4 The Executive Engineer along with others visited the said Premises on 7th September, 2020 at 11.00 a.m. (Monday), where Shri Nikhil Surve, Manager of the premises of the Petitioner was also present. After Shri Nikhil Surve took permission from Ms. Rangoli, sister of the Petitioner over the phone, the Executive Engineer and others were given access to the said Premises. The Executive Engineer and others inspected the said Premises and prepared inspection notes, inspection report and also notice under Section 354A, addressed to the Petitioner, on the same day i.e. 7th September, 2020, and pasted the Notice on the outer door of the said Premises on 8th September, 2020 (Tuesday) at 10.03 a.m.

7.5. Exactly after 24 hours, MCGM started the demolition work, which is stopped few minutes back in view of the oral directions of this Court.

8. Section 354A of the Act (which is invoked by the MCGM by issuing the impugned Notice dated 7th September, 2020), sets out the '*power of Commissioner to stop erection of building or work commenced or carried on unlawfully.*' From the works set out in the Notice, it is clear beyond any doubt that the works which are 'unauthorised' have not come up overnight. However, all of a sudden, the Corporation appears to have overnight woken up from its slumber, issued Notice to the Petitioner, that too when she is out of the State, directing her to respond within 24 hours, and not granting her any further time, despite written request, and proceeding to demolish the said Premises upon completion of 24 hours. Though the manner in which the MCGM has proceeded to commence demolition work of the said Premises, prima facie does not appear to be bonafide and smacks of malafide, we are giving an opportunity to the MCGM to explain its stand / conduct on Affidavit by 3.00 p.m. tomorrow.

9. We cannot help but mention here that if the MCGM would act with similar swiftness qua the numerous unauthorized constructions in this City, the City would be a completely different place to live in.

10. In the circumstances, we pass the following Order :

(i) We allow the Petitioner to carry out necessary amendments to the Petition.

- (ii) We direct the MCGM to file its Affidavit in Reply by 3.00 p.m tomorrow.
- (iii) In the meantime, the MCGM is restrained from carrying out any further demolition qua the said Premises mentioned in the impugned Notice.
- (iv) Stand over to 10th September, 2020 at 3.00 p.m.

11. This Order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this Order.

(R. I. CHAGLA, J.)

(S.J.KATHAWALLA, J.)