Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER [STAMP] NO.270 OF 2021
A/W
INTERIM APPLICATION [STAMP] NO.271 OF 2020
IN
APPEAL FROM ORDER [STAMP] NO.270 OF 2021

1. Sonu Sood]
Aged 48 years, Occupation: Actor]

2. Sonali Sonu Sood]
Age: 50 years, Occ: Household,]
Both of Mumbai, Indian Inhabitant,]
Having their address at Shakti Sagar,]
Building C.T.S Nos.360 & 360/1 to 4]
Village Juhu, A.B. Nair Road,]
Juhu, Mumbai – 400 049.] Appellants
(Orig. Plaintiffs)

Versus

1. Municipal Corporation of Greater]
Mumbai, a Body Corporate]
Constituted under the Mumbai]
Municipal Corporation Act, 1888,]
Having its office at Mahapalika Marg,]
Opp. C.S.T, Fort, Mumbai – 400 001.]

2. Designated Officedr – IV,]
Asst. Engineer (B & F),]
K/West Ward, 6th Floor, Paliram,]

Path Off. BEST Bus Depot Road,]

Opp. Andheri (W), Mumbai – 400 058.] Respondents

.....

Mr. Amogh Singh i/b D.P. Singh, for Appellants.

Mr. A.Y. Sakhare Senior Counsel a/w Mr. Jeol Carlos, a/w Mrs. Madhuri More, for Respondents.

.....

CORAM : PRITHVIRAJ K. CHAVAN, J.

RESERVED ON : 13th JANUARY, 2021.
PRONOUNCED ON : 21st JANUARY, 2021.

JUDGMENT:

1. By this appeal, the appellants/original plaintiffs have impugned the order dated 19th December, 2020 passed by the learned Judge, City Civil Court, Mumbai rejecting the Notice of Motion bearing No.1590 of 2020.

2. Facts are as follows:

On 23rd November, 2020, the appellants filed a suit under sections 34, 37 to 39 of the Specific Relief Act, 1963 against the respondents-Municipal Corporation of Greater Mumbai. They have sought a declaration that the impugned notice under section 53 (1) of the Maharashtra Regional and Town Planning Act, 1966 (for short 'M.R.T.P Act") dated 24th October, 2020 issued by respondent No.2 be declared as illegal, bad in law, mala fide and nullity, *inter alia*, seeking relief of permanent injunction.

The appellants are claiming to be the owners and in occupation of a building known as “Shakti Sagar” comprising basement and ground plus six floors. (This building shall be referred to as ‘suit building’ hereinafter for the sake of brevity.) The appellants have acquired rights in respect of the suit building through different agreements executed between them and the erstwhile owners. However, a copy of agreement only in respect of Flat No.606 on the 6th floor of the suit building is filed. The appellants yet to get the said land and other record transferred in their names. The appellants, however, have been paying electricity bills which are being issued in their names.

It has been specifically averred in the plaint that they are desirous of starting a residential hotel in the suit building for which an application has been submitted somewhere in the year 2018, which is pending. The appellants, therefore, were carrying out interior work for which, according to them, no permission is required under sections 342 and 347 of the Mumbai Municipal Corporation Act, 1888 (for short ‘M.M.C Act’) or under section 43 of the M.R.T.P Act.

It is averred that one Ganesh Shankar Kusmulu, representative of a NGO demanded huge amount from the appellants by threatening that if the appellants do not part with such amount, he would lodge a complaint with the respondents in respect of the alleged unauthorized and illegal construction carried out by them. The appellants, however, declined the demand of the said Ganesh resulting into a complaint being filed by him with

the respondents. The said Ganesh succeeded in persuading the respondents about the alleged illegalities of the appellants, pursuant to which, the impugned notice dated 24th October, 2020 under section 53 (1) of the M.R.T.P Act bearing No. KW/DO4KW/ 069/53-I-MRTP ACT/KW230N001/24/1/2020 came to be issued. By the said notice, the respondents intimated the appellants that they have carried out unauthorized additions and alternations beyond approved plan and changed the user from residential to Residential Hotel without technical sanction. According to the appellants, notice has been issued at the behest of Ganesh *sans* any inspection of the suit building or without any prior notice. The said Ganesh and the respondents acted in collusion.

The appellants being social activists and were busy during lock down, there was a delay in approaching their Advocate to give reply to the notice which, ultimately was given on 23rd November, 2020.

The suit also came to be filed on 23rd November, 2020 itself i.e the day on which the appellants sent reply. The appellants, therefore, have an apprehension that in terms of the impugned notice, the respondents would demolish the structure and, therefore, they have approached the City Civil Court by filing a suit, *inter alia,* claiming relief of temporary injunction as stated hereinabove.

3. The learned City Civil Judge, however, by the impugned order dated 19th December, 2020, after considering the contentions

raised by the respective parties, by a reasoned order, dismissed the Notice of Motion bearing No.1590 of 2020.

4. The respondents-M.C.G.M, in its affidavit-in-reply, have dealt with each and every averment in the plaint. It is contended that the appellants have approached the Court with unclean hands with a mala fide intention and by abuse of process of the Court seeking protection to illegal commercial hotel which came to be constructed by them contrary to the sanctioned building plan and in violation of the provisions of the M.R.T.P and M.M.C Act. The hotel is being run without any licence under section 394 of the Act. It is contended that the appellants have totally modified the entire building unauthorizedly into a hotel which is being run illegally without licence and thereby putting their customers at great risk.

5. A prosecution has already been launched against the appellants for contravening the provisions of section 394 of the M.M.C Act. The appellants are consuming water and electricity without paying charges at commercial rate. The appellants have conducted serious violation of non payment of public revenue. There is no compliance with the condition of NOC from MCGM.

6. While highlighting the series of illegalities and breaches committed by the appellants, the respondents-M.C.G.M has placed on record some material facts. It is contended that the first inspection of the suit building and the first notice came to be issued on 1st September, 2018 under section 354 (A) of the M.M.C

Act directing the appellants to stop the unauthorized work. The appellants, however, continued by ignoring the same and, therefore, the structure was first demolished on 12th November, 2018. However, the appellants again re-started the work of unauthorized additions and alternations as well as change of user despite there being existence of a notice under section 354 (A) of the M.M.C Act. The demolition was carried out by virtue of self operating provisions of section 354 (A) on 12th November, 2018.

7. On 4th February, 2020, a speaking order was passed under section 354 (A) after analyzing the documents submitted by the appellants. Despite directing the appellants to remove the said unauthorized work, the appellants did not act accordingly and started continuing with unauthorized additions and alternations as well as change of user. The structure was demolished for the second time on 14th February, 2020. Thus, it is contended that the appellants are habitual offenders, who, without there being any legal and necessary permission and authorization, went on reconstructing the structures by continuing violation and, therefore, they are not entitled for any equitable relief of temporary injunction.

8. It is also contended that the learned Lokayukta, Maharashtra took cognizance of the complaint dated 23rd January, 2020 lodged by the said Ganesh and directed the respondents-M.C.G.M to file a report as to why action should not be taken against it and it's officers for dereliction of duties.

9. According to the respondents, the suit is premature in the sense, the appellants have, without waiting for a mandatory period of one month of the notice, filed a suit on the very day of replying the notice, thereby, restricting the respondents from adjudicating the case. This is a well thought strategy of the appellants to continue with the illegal commercial hotel business in the suit building.

10. The respondents have also specifically contended that there is an express bar under section 149 of the M.R.T.P Act by which no suit can be filed against the respondents and, therefore, on this count itself the appeal deserves to be dismissed.

11. Heard Mr. Singh, the learned Counsel for the appellants at length as well as Mr. Sakhare, the learned Senior Counsel for the respondents-M.C.G.M.

12. The learned Counsel for the appellants would argue that the impugned notice dated 24th October, 2020 under section 53 (1) of the M.R.T.P Act is not only illegal, arbitrary and mala fide but also a nullity which does not depict proper description of the alleged offending structure. The notice does not say “not less than a month” as contemplated under section 53 (1) of the M.R.T.P Act. According to Mr. Singh, there is no speaking order nor there is any mention of earlier demolitions, however, the appellants have already applied for regularisation under section 43 of the M.R.T.P Act.

13. The learned Counsel for the appellants admits that earlier notice issued by the respondents had been acted upon. The impugned notice being independent which does not refer to earlier demolition and, therefore, it cannot be said that the appellants have suppressed those facts from the Court.

14. In support of his contention, the learned Counsel has placed reliance upon some decisions, which shall be referred at the appropriate stage.

15. On the other hand, while strongly opposing the reliefs claimed by the appellants Mr. Sakhare, the learned Senior Counsel appearing for the respondents took me through the series of facts and documents on record in order to buttress his point to indicate as to how the appellants are not only habitual offenders but have been repeatedly violating the provisions of both the M.M.C Act and the M.R.T.P Act by reconstructing the offending structure/structures after it's demolition twice. It is vehemently urged that the appellants have neither any *prima facie* case nor balance of convenience tilts in their favour. There is no question of irreparable loss as, in case, they succeed, they can claim damages.

16. According to Mr. Sakhare, the trial Court had rightly refused equitable relief to the appellants since they had approached the Court with unclean hands. He would argue that the suit building was constructed in the year 1992 for residential purpose which is evident from the inspection report at page 23. Despite issuance of stop work notice, which came to be issued on 1st September, 2018

by the Designated Officer of the respondents *qua* offending structure as well as Police report which came to be lodged on the same date; the appellants did not pay any heed and continued with the illegal activities of making unauthorized additions and alternations.

17. In essence, Mr. Sakhare, would argue that several material documents have been placed on record viz; notice under section 354 (A) of the M.M.C Act dated 1st September, 2018, a speaking order dated 4th February, 2020, the appellant's letter dated 4th August, 2018 and the mischief played therein as well as the factum of earlier demolitions have been deliberately suppressed with an ulterior motive. The photographs tendered on record and cognizance of the complaint taken by the learned Lokayukta further corroborates act of illegal and unauthorized alterations viz the offending structures erected by the appellants.

18. The learned Senior Counsel would argue that in view of section 149 of the M.R.T.P Act, there is express bar to file a suit in any Court. Mr. Sakhare has placed reliance on a few case laws of this Court as well as the Hon'ble Hon'ble Supreme Court. I shall deal with the same at the appropriate stage.

19. It is an undisputed fact that the appellants are intending to convert the suit building from residential to commercial use i.e for a hotel as averred in paragraph 9 of the plaint. It is also an undisputed fact that the appellants have started carrying out some additions and alterations under the name of beautification from

the year 2018 which is evident from the notice dated 1st September, 2018 *sans* any permission or sanctioned plan of any competent authority. The appellants have also contended that they have applied for regularization of the alleged unauthorized construction and are not supposed to seek prior permission as per section 43 of the M.R.T.P Act.

20. In the context of the challenge which is raised *qua* the impugned notice under section 53 of the M.R.T.P Act, it would be first necessary to briefly refer to the objects and reasons behind the enactment. The underlined object of the M.R.T.P Act is to have a proper and planned development in the areas to which it applies. It is, therefore, the statutory obligation of a planning authority to see that the development is carried out in terms of the development plan. The planning authority is, therefore, vested with requisite power under the M.R.T.P Act to take action against unauthorized construction.

21. Having taken into consideration, the objects and reasons behind enacting the M.R.T.P Act, it would be now apposite to refer to section 53 of the M.R.T.P Act which is one of the provisions in contention. The said provision is reproduced hereunder;

> *"53. Power to require removal of unauthorized development;*
> *(1) (a)Where any development of land has been carried out as indicated in clause (a) of (c) of sub-section (1) of section 52, the Planning Authority may, subject to the provisions of this section, serve on the owner, developer or occupier a prior notice of 24 hours requiring him to restore the land to conditions existing before the said development took place;*
> *(b)if the owner, developer or occupier fails to restore the land accordingly, the Planning Authority shall immediately*

take steps to demolish such development and seal the machinery and materials used or being used therefor,

[(1A) Where any development of land has been carried out as indicated in clause (b) or (d) of sub-section (1) of section 52, the Planning Authority may, subject to the provisions of this section, serve one month's notice on the owner, developer or occupier requiring him to take necessary steps as specified in the notice.]

(2) In particular, such notice may, for purpose of sub-section (1), require—

(a) the demolition or alteration of any building or works ;

(b) the carrying out on land of any building or other operations ; or

(c) the discontinuance of any use of land.

(3) Any person aggrieved by such notice may, within the period specified in the notice and in the manner prescribed, apply for permission under section 44 for retention on the land of any building or works or for the continuance of any use of the land, to which the notice relates, and pending the final determination or withdrawal of the application, the mere notice itself shall not affect the retention of buildings or works or the continuance of such use.

(4) The foregoing provisions of this Chapter shall, so far as may be applicable, apply to an application made under sub-section (2).

(5) If the permission applied for is granted, the notice shall stand withdrawn ; but if the permission applied for is not granted, the notice shall stand ; or if such permission is granted for the retention only of some buildings, or works, or for the continuance of use of only a part of the land, the notice shall stand withdrawn as respects such buildings or works or such part of the land, but shall stand as respects other buildings or works or

other parts of the land, as the case may be; and thereupon, the owner shall be required to take steps specified in the notice under sub-section (1) as respects such other buildings, works or part of the land.

(6) If within the period specified in the notice or within the same period after the disposal of the application under sub-section (4), the notice or so much of it as stand is not complied with, the Planning Authority may—

(a) prosecute the owner for not complying with the notice ; and where the notice requires the discontinuance of any use of land any other person also who uses the land or causes or permits the land to be used in contravention of the notice ; and

(b) where the notice requires the demolition or alteration of any building or works or carrying out of any building or other operations, itself cause the restoration of the land to its condition before the development took place and secure compliance with the conditions of the permission or with the permission as modified by taking such steps as the Planning Authority may consider necessary including demolition or alteration of any building or works or carrying out of any building or other operations ; and recover the amount of any expenses incurred by it in this behalf from the owner as arrears of land revenue.

(7) Any person prosecuted under clause (a) of sub-section (6)shall, on conviction, 1[be punished with imprisonment for a term 2[which shall not be less than one month but which may extend to three years and with fine which shall not be less than two thousand rupees but which may extend to five thousand rupees, and in the case of a continuing offence with a further daily fine which may extend to two hundred rupees] for every day during which such offence continues after conviction for the first commission of the offence.]

(8) The Planning Authority shall, by notification in the Official Gazette, designate an officer of the Planning Authority to be the Designated Officer for the purposes of exercise of the powers of the Planning Authority under this section and sections 54, 55 and 56. The Designated Officer shall have jurisdiction over such local area as may be specified in the notification and different officers may be designated for different local areas"

22. Turning to the actions initiated by the respondents-M.C.G.M against the appellants from time to time, which have been suppressed by the appellants, can be described hereinbelow.

23. Document **Exhibit-R-1** is the first inspection report dated 1st September, 2018 in respect of the suit building. In short, the said report reveals that the owner-occupier refused to give permission to enter into the premises. It indicates that there were additions and alterations made by using sisporex block partition walls from first floor up to sixth floor without any prior authentic permission and removing of a brick masonary walls in Vinas Building, A.B. Nair Road.

24. **Exhibit-R-2** is the stop work notice issued by the respondents under section 354 (A) of the M.M.C Act dated 1st September, 2018. Acknowledgment of receipt of this notice was made by the Watchman of the building namely Rameshkumar, who had signed thereof. A schedule was given indicating the description of the unauthorized additions and alterations by using sisporex block partition walls from the first floor up to the sixth floor without any prior authentic permission and removing of brick masonary walls

in Vinas Building, A.B. Nair Road. The notice indicates that the owner-occupier was asked that if he is in possession of any permission approved by the Competent Authority in favour of execution of the aforesaid work, he shall produce the same within 24 hours in the office of the respondents, failing which, an action under section 354 (A) would be initiated without any further notice and the said additions and alterations would be removed or pulled down at the cost of the owner-occupier.

25. A Police report has already been lodged with Police Station, Juhu which has also been duly acknowledged on the same date. The Police Authority was requested to assist by providing Police Force, in case, there are some obstructions or resistance while pulling down the unlawful and unauthorized structures in respect of the suit building. The notice was simultaneously pasted on the wall of the suit building. A photograph is on page No.29.

26. An interesting aspect surfaced from the record depicting as to how, in a deceitful manner, appellant No.1 by his communication dated 4th August, 2018 in reference to the respondents' notice dated 1st September, 2019 informed the latter that on 19th June, 2018 through his Architect namely Kalpesh Jain, a proposal had been forwarded for the proposed change of user. It appears that appellant No.1 even before issuance of the notice dated 1st September, 2018 under section 354 (A) of the M.M.C Act anticipated it's issuance and, therefore, on 4th August, 2018 itself, by the aforesaid communication had informed about the proposal made to the Chief Officer by his communication dated 13th July,

2018. This itself is sufficient to refuse the relief of temporary injunction, since the appellants have not approached the Court with clean hands and it is apparent that their intention was mala fide. The respondents had demolished the offending structure on 12th November, 2018 for the first time.

27. **Exhibit-R-4** is a speaking order dated 4th February, 2020. Having considered the response to the said notice by the appellants on **12th September, 2018**, the Authority had examined and scrutinized the documents submitted on behalf of the appellants. The documents submitted by the appellants and the remarks given the Authority are as follows;

Sr. No.	*Documents/ Evidence produced*	*Remarks*
1.	*Forwarding letter dtd. 12.09.2018 (039409)*	*The document submitted by you does not prove the authenticity of the notice structure because, to treat the notice structure authorized, you must have a permission issued by the competent authority or your structure must reflect plan sanctioned by the competent authority i.e M.C.G.M. Till date you have failed to submit the approval of competent authority i.e Building Proposal dept of MCGM for addition alteration mentioned in the notice.*
2.	*The photocopy of 'Acknowledgment letter' from Chief Engineer, B.P.*	*The document submitted by you does not prove the authenticity of the notice structure because, to treat the*

	M.C.G.M dtd. 19.08.2018	*notice structure authorized, you must have a permission issued by the competent authority or your structure must reflect in plan sanctioned by the competent authority i.e M.C.G.M. Till date you have failed to submit the approval of competent authority i.e Building Proposal dept of MCGM for addition alteration mentioned in the notice.*
3.	*The photocopy of letter under no.CHE/TEMP/121 87/342-CFO dtd. 13.07.2018 issued by Mumbai Fire Brigade dept.*	*The document submitted by you does not prove the authenticity of the notice structure because, to treat the notice structure authorized, you must have a permission issued by the competent authority or your structure must reflect in plan sanctioned by the competent authority i.e M.C.G.M. Till date you have failed to submit the approval of competent authority i.e Building Proposal dept of MCGM for addition alteration mentioned in the notice.*
4.	*The photocopy of 'Occupation Certificate' under no.CE/6958/BS-II/ AK of dtd. 23.01.1992*	*The document submitted by you does not prove the authenticity of the notice structure because, to treat the notice structure authorized, you must have a permission issued by the competent authority or your structure must reflect in plan sanctioned by the competent authority i.e M.C.G.M.*

5.	*The photocopy of plan 'Proposal for regularization of addition/alteration'.*	*The document submitted by you does not prove the authenticity of the notice structure because, to treat the notice structure authorized, you must have a permission issued by the competent authority or your structure must reflect in plan sanctioned by the competent authority i.e M.C.G.M. Till date you have failed to submit the approval of competent authority i.e Building Proposal dept of MCGM for addition alteration mentioned in the notice.*

Having considered the remarks, the Assistant Commissioner of the Competent Authority concluded thus;

CONCLUSION

As, it is ongoing construction work, you must have produce prior permission issued by the competent authority for construction of notice structure. Till date you have failed to submit the approval/permission of competent authority i.e Building Proposal dept of MCGM for addition alteration mentioned in the notice. In view of above, I came to the conclusion that construction carried out by you is totally unauthorized and liable for demolition. Hence, I pass the following order.

ORDER

You are hereby, directed to remove the said unauthorized work at above mentioned address in the above referred notice within seven days from the receipt of this order, failing which, the unauthorized work will be demolished at your risk & cost and the charges of the demolition will be recovered from you through assessment department".

28. It can be seen that nothing has been disclosed by the appellants in the plaint which, in normal course, they ought to have disclosed all the facts in respect of the suit building and the earlier notice, their reply as well as conclusion drawn by the Authority and an order which came to be passed in accordance with section 354 (A) of the M.M.C Act. Since the order dated 4th February, 2020 has not been challenged, it has attained finality.

29. Pursuant to the said order, vide document **Exhibit-R-5,** unauthorized structure had been demolished by the respondents on 14th February, 2020. The photographs annexed along with **Exhibit-R-5** demonstrate the work of demolition in progress which were snapped on 14th February, 2020 itself. This fact has also been suppressed by the appellants.

30. **Exhibit-R-6** is the complaint lodged with Lokayukta Maharashtra. The learned Lokayukta took cognizance of the said complaint and after hearing the complainant and the Authorities of the respondents, by it's communication dated 30th January, 2020, directed the Assistant Commissioner, K-Western Zone, M.C.G.M to remain present before him on 7th February, 2020. The learned Senior Counsel appearing for the respondents-Corporation states that the learned Lokayukta had directed the respondents-Corporation to initiate appropriate action against the concerned officer of the respondents who had failed in his duties to initiate appropriate action as per the law against the appellants in respect of unauthorized additions and alterations.

31. **Exhibit-R-7** depicts the inspection report *qua* the suit building. The Designated Officer and the Competent Authority in view of the said inspection report directed to initiate action of removing the unauthorized offending structures.

32. Subsequently, on 24th October, 2020 when the impugned notice was served upon the appellants, the first inspection report has been tendered which indicates that earlier, despite issuance of a notice under section 354 (A) of the M.M.C Act, unauthorized constructions were not removed. Subsequently, the respondents demolished the structures. Inspection report depicts a sketch of unauthorized additions and alterations which are beyond the approved plans under No.CE/9656/BS-II/AK DATED 23.01.1992 as well as unauthorized change of user from residential to residential hotel building without taking technical sanction from the Competent Authority.

33. In view of this inspection report submitted by the Junior Engineer of the respondents, the Designated Officer and Assistant Commissioner proposed that notice under section 53-A of the M.R.T.P Act has to be issued. The impugned notice has been issued to the appellants. It's copy was also pasted on the outer wall of the suit building. A description of the unauthorized structure has been given in the said notice together with particular of land directing the appellants to discontinue the use of residential building for residential hotel purpose till there is technical sanction from the Competent Authority.

34. In the alternative, the appellants have been asked to apply under section 44 of the M.R.T.P Act for retention of the work before the Competent Authority within one month from the receipt of the notice. It was further clarified that failure to comply with the aforesaid directions, the appellants would be liable for prosecution under the said Act.

35. Admittedly, neither the appellants discontinued or dismantled the unauthorized structure *qua* the suit building nor applied under section 44 of the M.R.T. Act. Rather, it is their contention that they need not obtain such permission in view of section 43 of the M.R.T.P Act.

36. The respondents have lodged a prosecution under section 394 of the M.M.C Act. **Exhibit-R-10** reveals that after inspection of the suit building and pursuant to a notice under section 354 of the M.M.C Act, the premises were inspected by the Health Department Staff on 24th January, 2019. It was noticed that the appellants are conducting lodging (Guest House) without proper licence. They were operating 23 rooms in the suit building and, therefore, they are being prosecuted.

37. The learned Senior Counsel appearing for the respondents has also drawn my attention to the second inspection report at **Exhibit-R-9** dated 4th January, 2021. The report indicates that when the premises in question was inspected in accordance with a notice under section 53 (1) of the M.R.T.P Act, it was observed that the appellants have not complied with the notice. The

photographs annexed along with **Exhibit-R-9** at pages No.67 to 69 indicate different rooms depicting Room numbers 201, 203, 303, 404, 504, 601 and 602 in the suit building which are being used as rooms for the purpose of lodging.

38. It may not be out of place to mention what the learned Lokayukta has observed in his order dated 23rd January, 2020. I quote paragraph 4 of the order which reads thus;

> *" In the circumstances, I direct the Assistant Municipal Commissioner K/West Ward and the then Designated Officer Shri Deepak Laxman Gholam to file their respective affidavits as to what prevented them from taking action pursuant to the notice issued under Section 354-A".*

39. Thus, it can be seen that the appellants have neither restored the changes which have been made in the suit building without permission of the Authority under the M.R.T.P Act, nor applied under section 44 as contemplated in section 53 sub-section (3) of the M.R.T.P Act. It is pertinent to note that the appellants cannot take aid of section 43 by contending that no such permission is necessary for the simple reason that the proviso to section 43 contemplates that such permission is not necessary for carrying out a work of maintenance/improvement or other alteration of any building or the work is being carried out in compliance with any order or direction passed by any Authority. This is significant in the light of the fact that the appellants themselves have come with a case that they want to convert the offending structure into a residential hotel.

40. At this stage, it would be apposite to refer to a judgment of this Court in case of **Overseas Chiese Cuisine (India) Pvt. Ltd and another Vs. The Municipal Corporation of Greater Bombay and others, 2000 (1) Bom. CR 341**. It this judgment, it has been held thus;

> "*In case of unauthorized structure the Planning Authority shall issue a notice calling upon to require the demolition or alteration of any building or works or the carrying out on land of any building or other operations or the discontinuance or any use of any land. The aggrieved person may, within the time allowed by the notice and in the prescribed manner, apply for permission under section 44 of the M.R.T.P Act for "retention on the land of any building or works or for continuance of any use of the land to which the notice relates". Once this is done, pending the final determination or withdrawal of the application, the owner is given the liberty of retention of the offending building or works. If such application is granted, then the notice is deemed to have been withdrawn. If such notice is dismissed then the owner is liable to carry out what is directed under the notice, namely, demolition, alteration of any building or works and so on. An order made under section 44 is appealable under section 47 to the State Government".*

Thus, it can be seen that the appellants have neither discontinued carrying out additions and alterations in respect of offending structure but rather went on re-erecting the same in the absence of any authorization or permission from the Competent Authority. Since, there is no application seeking permission, there is no question of retaining the offending structure.

41. The learned Counsel for the respondents has, therefore, placed a useful reliance on a decision of this Court in case of **Sarina Esmeralda Lopez Vs. Vijay Goverdhandas Kalantri and another, 2015 (2) Mh. L.J, 603**. A single Judge of this Court while emphasizing the aim and object of the Maharashtra Regional and Town Planning Act observed thus;

> *"Having heard the Applicant in person, the learned Senior Counsel for the Respondent No.1 and the learned Senior Counsel for the Respondent No.2, I have considered the rival contentions. In the context of the challenge which is raised and which revolves around the bar as contained in Section 149 of the MRTP Act it would be necessary to briefly refer to the objects and reasons behind the MRTP Act. The MRTP Act has been enacted to make provision for planning the development and use of land in Regions established for that purpose and for the constitution of Regional Planning Boards therefor; to make better provisions for the preparation of Development plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective, to provide for the creation of new towns by means of Development Authorities; to make provisions for the compulsory acquisition of land required for the public purposes in respect of the plans. The underlying object of the MRTP Act is therefore to have a proper and planned development in the areas to which it applies. It is therefore the statutory obligation of a planning authority to see that the development is carried out in terms of the development plan. The planning authority is therefore vested with the requisite power under the MRTP Act to take action against the unauthorized construction. It is with a view to give finality to the orders passed by the planning authority that the bar under Section 149 of the MRTP Act is provided. There can be no dispute about the fact that the MMC is both the local authority and the planning authority in so far as the provisions of the MRTP Act are concerned".*

42. The learned senior Counsel Mr. Sakhare has also placed reliance on a well-known judgment of this Court in case of **Sopan Maruti Thopte and another Vs. Pune Municipal Corporation and another, 1996 (1) Mh. L.J., 963**. While disposing of a group of Writ Petitions, the Division Bench of this Court has elaborately discussed the powers of the Commissioner under section 351 (1) of the Bombay Municipal Corporation Act. The Division Bench has taken survey of various case laws on the subject including the aspect of *audi alteram paretm* i.e principle of natural justice and the doctorine of hearing which, according to the said ratio is not extended in every case. It would be apposite to reproduce paragraph 19 of the judgment which contemplates broad features to be considered before taking action under section 351 of the erstwhile B.M.C Act. They are as follows;

> *"19. Hence, on the basis of the law as discussed above, it is directed that after 1st May, 1996 the Bombay Municipal Corporation or the Municipal Corporations constituted under the B.P.M.C. Act would follow the following procedure before taking action under Section 351 of the B.M.C. Act or under S.260 of the B.P.M.C. Act.*
>
> *"(i) In every case where a notice under Section 351 of the B.M.C. Act/under Sec. 260 of B.P.M.C. Act is issued to a party 15 days time shall be given for submitting the reply. In case the party to whom notice is issued sends the reply with the documents, and shows cause, the Municipal Commissioner or Deputy Municipal Commissioner shall consider the reply and if no sufficient cause is shown, give short reasons for not accepting the contention of the affected party.*

(ii) It would be open to the Commissioner to demolish the offending structure 15 days after the order of the Commissioner/Deputy Municipal Commissioner is communicated to the affected person.

(*iii) In case the staff of the Corporation detects the building which is in the process of being constructed and/or reconstructed and/ or extended without valid permission from the Corporation, it would be open to the Commissioner to demolish the same by giving a short notice of 24 hours after drawing a panchanama at the site and also by taking photographs of such structure and/or extension. The photographs should indicate the date when the same were taken.*

(iv) In case where the Municipal Corporation has followed due process of law and demolished the unauthorised structure and/or extension, if the same is reconstructed without valid permission within a period of one year, it would also be open to the Corporation to demolish the same by giving a short notice of 24 hours.

(v) If the offending structure and/or extension which is assessed by the Corporation for two years, notice shall provide for 15 days time to show cause. If the Deputy Municipal Commissioner comes to the conclusion that he requires assistance of the party, he may give an oral hearing if he deems fit and proper before passing the order. It is made clear that oral hearing is not at all compulsory but it is at the discretion of the authority.

(vi) In any other case the Corporation is directed to issue a show cause notice in case of any structure and/or extension other than those mentioned in clauses (i) to (iv) above. The Corporation shall

provide for 7 days' time to show cause in such a case."

22. Now, we would deal with the contention that in most of cases, which are pending before the Courts, ad interim relief is granted without proper verification of plaintiff s right. In both the referring judgments, the learned Judges have emphasised this aspect and observed that unauthorised constructions are mushrooming in this city every day and unauthorised constructions are regularly put up and the interim reliefs continue without any hindrance. I*t is true that the stay order or interim relief in such cases affects the society as a whole and administration of Municipal Corporations. Further the result is number of suits are filed and pending against Municipal Corporations or Government bodies restricting the authorities from removing the unauthorised construction. Interim reliefs continue for years, may be in some cases the authorities do not file written statements or reply promptly or they do not move the Court for vacating the interim reliefs. The result is that implementation of law suffers. This also tends to lower the Court's prestige and clearly undermines the Rule of Law".*

(emphasis supplied)

43. On the other hand, Mr. Singh has placed reliance on a judgment of this Court in case of **Kishor s/o Ramalu @ Rambhau Telang Vs. Municipal Commissioner, Nagpur, 2015 (4) Mh, L.J. 836**. According to Mr. Singh, the respondents-MCGM has not issued the impugned notice under section 53(1) of the M.R.T.P Act in its letter and spirit. The Court below in the impugned order in paragraph 12 correctly appreciated it's scope. My attention is drawn by Mr. Singh to the observations of the learned Single Judge of the Bombay High Court, Bench at Nagpur in case of **Kishor** that there is an expression

in section 53 (1) that the Planning Authority is required to serve on the owner a notice requiring him to take such steps as may be specified in such period 'being not less than one month'. Whereas, the impugned notice depicts that the Authority had directed the appellants to remove the structure "within one month from the date of the notice".

44. As against this, in case of **Sarina Lopez** (supra), it is observed by the learned Single Judge which reads thus;

> *"17. In so far as the allegation that principles of natural justice are violated, the said ground is based on the fact that straight way the notice of demolition has been issued, the scheme as contained in Section 53 of the MRTP Act has been referred to herein above. The said scheme does not contemplate any hearing to be granted prior to issuance of a notice under Section 53(1) of the MRTP Act as the addressee of the notice is given time to carry out corrections or make amends. As indicated above, Section 53(3) provides for a representation or an application to be made for regularization under Section 44 and pending such consideration further action pursuant to the notice is stayed. Admittedly no representation is made by the Plaintiff and the construction/development is sought to be justified on the ground that it is sold to him by the Developer who has also put up the wall. Hence when the statute does not provide for hearing to be granted prior to the issuance of the notice under Section 53(1), the question of violation of principles of natural justice would not arise, and in fact the Plaintiff without availing of the opportunity under Section 53(3) has rushed to the Civil Court and obtained injunction on the ground that there is a threat of demolition. It is also required to be noted that the authority of the officer issuing the notice or the authority of the MMC to issue notice has not*

been questioned by the Plaintiff. In so far as whether the notice could have been given by the MMC in respect of the construction/development which has been carried out at any earlier point of time, that is even accepting for a moment the case of the Plaintiff that the Developer has put up the brick masonry wall and enclosed the open space, in view of the amendment to Section 53, limitation of three years which was prescribed for taking action has been removed and therefore the MMC was within its right to issue notice in respect of the alleged unauthorized construction/ development assuming that it was put up by the Developer.

"18. Hence if the case of the Plaintiff is tested, there is no issue of jurisdiction which arises for consideration. The Plaintiff has also not been able to prima facie prove as to how the notice is bad and illegal. Mere use of the words illegal, bad in law without any substantiation would not aid the Plaintiff to invoke the jurisdiction of the Civil Court as the jurisdiction of the Civil Court can now be invoked only if the action is a nullity on account of there being an error of jurisdiction. The Trial Court has erred in observing that since the word nullity is used, the suit is maintainable. Though the Plaintiff has not specifically attributed nullity to the said order and since illegality cannot take place of nullity assuming for a moment one takes place of the other, the said ground is also not substantiated. The Trial Court has further compounded the fact by holding that the development of changing the position of the doors amounts to internal work. How such a conclusion could be arrived at by the Trial Court at the preliminary stage, therefore begs an answer. In my view, the Trial Court has therefore a committed jurisdictional error in entertaining the suit in question".

Even otherwise, as already observed hereinabove, in view of amendment to Section 53, phrase "being not less than one month" does not exist and, therefore, the decision in case of **Kishor** (supra), would not be of any assistance to the appellants.

45. The Hon'ble Supreme Court in a latest judgment in the case of **Municipal Corporation of Greater Mumbai and others Vs. Sunbeam High Tech Developers Private Limited, (2019) 20 Supreme Court Cases, 781** reiterated the principles laid down by this Court in **Sopan** (supra). The ratio laid down would be squarely applicable to the present set of facts and circumstances.

46. Mr. Singh emphasized a legal principle which connotes that 'where a power is given to do a certain thing in a certain way the things must be done in that way or not at all". In support of his contention, he placed reliance upon a judgment of the Hon'ble Supreme Court in case of Central **Coalfields Limited and another Vs. SLL-SML (Joint Venture Consortium) and others, (2016) 8 Supreme Court Cases 622.** I am afraid, I cannot buy the arguments of Mr. Singh for the simple reason that this principle is mostly applicable in contractual disputes, more particularly, in commercial Bodies/contracts. The position of law was as has been contended by Mr. Singh, then existed before the amendment on 15th April, 2017. Sub-section-(1) of Section 53 has been substituted with effect from 15th April, 2017 which would be applicable to the present case. As already stated, the term "not less than one month" is no more in existence as it has been deleted in view of the amendment to the said section. The ratio laid down, therefore, will not be of any assistance

to the learned Counsel for the appellants.

47. On the issue of equity, Mr. Singh has cited a judgment of the Hon'ble Supreme Court in case of **Nova Das Vs. Metropolitan Transport Corporation and others, (2015) 13 Supreme Court Cases 287**. My attention is drawn to paragraphs 45 to 47 of the judgment, which according to Mr. Singh will have to be considered.

> *"45. In Raja Ram Mahadev Paranjype v. Aba Maruti Mali, AIR 1962 sc 7353, A three-Judge Bench has opined that*
>
> *9.... "equity does not operate to annul a statute. This appears to us to be well established but we may refer to White and Tudor's Leading cases in Equity (9th ed. P. 238), where it is stated:*
>
> *'Although, in cases of contract between parties, equity will often relieve against penalties and forfeitures, where compensation can be granted, relief can never be given against the provisions of a statute."*
>
> *46. In P.M. Latha V. State of Kerala, (2003) 3 SCC 541, it* has been opined;
>
> *"Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law"*
>
> *47. In Raghunath Raj Bareja V. Punjab National Bank, (2007) 2 SCC 230 the Court observed that it is well settled that when there is a conflict between law and equity, it is the law which has to prevail. The Court further ruled that equity can supplement the law, but it cannot supplant or override it. In this context, reliance was placed upon Madamanchi Ramappa v. Muthaluru Bojjappa, AIR 1963 SC 1633, Laxminarayan R. Bhattad v. State of Maharashtra, (2003) 5 SCC 413, Nasiruddin v. Sita Ram Agarwal, (2003) 2 SCC 577, E. Palanisamy v.*

Palanisamy, (2003) 1 SCC 123 and India House v. Kishan N. Lalwani, (2003) 9 SCC 393.

Even, this ratio will not come in aid of the appellants, for, as has been observed, 'equity' and 'law' are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law. Here, there is no question of any equity being granted to the appellants as the appellants have approached the Court with unclean hands seeking relief of temporary injunction against the respondents by repeatedly committing breach of the provisions of the M.M.C Act as well as the M.R.T.P Act. Equity cannot supplant the law.

48. Mr. Singh has also pressed into service a well-known judgment of the Hon'ble Supreme Court in case of **Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others, (1978) 1 Supreme Court Cases 405**. The Hon'ble Supreme Court while dealing with the powers of Election Commission has, *inter alia,* discussed the aspect of natural justice as well distinction between administrative and quasi judicial functions. The learned Counsel has drawn my attention to paragraph 8 of the judgment which reads thus;

> "*8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the*

observations of Bose J. in Gordhandas Bhanji (Commr. Of Police, Bombay Vs. Gordhandas Bhanji, AIR 1952 SC 16) :

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

49. In fact, it was not a core issue before the Hon'ble Supreme Court, however, it has been observed that when a statutory functionary makes an order passed on certain grounds, it's validity must be judged for the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.

50. In the case at hand, even for a moment, earlier breaches are kept aside for a while, the impugned notice, as already discussed hereinabove, has been duly served upon the appellants giving them an opportunity to apply under section 44 of the M.R.T.P Act or to pull down the offending structure which, the appellants ignored and, therefore, I do not feel that the earlier orders passed and the notices issued by the Respondents-Authority were bad in law and by virtue of the impugned order get validated by the additional grounds which are brought to the notice of the Court. Here, the issue is whether the appellants are entitled to the relief

of temporary injunction and whether they have established the well-known principles while seeking equitable relief. The answer as already discussed is emphatically in the negative. I am, therefore, of the view that the said Authority can also be distinguished accordingly.

51. Last but not the least, it is the contention of the respondents that in view of section 149 of the M.R.T. P Act, there is an express bar to question any action, every order, direction passed by other, the State Government or by any Development Authority under the M.R.T.P Act in any suit or other legal proceedings. Section 149 reads thus;

> ***"149. Finality of order-*** *Save as otherwise expressly provided in this Act, every order passed or directions issued by the State Government or order passed or notice issued by any Regional Board, Planning Authority or Development Authority under this Act shall be final and shall not be questioned in any suit or other legal proceedings".*

52. In case of **Sarina Lopez** (supra), position of law has been again reiterated and has been expressed in the following manner;

> *"The said provision posits that every order passed or direction issued by the State Government or order passed or notice issued by any Regional Board, Planning Authority or Development Authority would be final and would not be questioned in any suit or other legal proceedings. Hence, the said section can be said to be what is popularly known as "the Finality Clause", or "the Clause of Exclusion".*

Needless to add that there is an express bar to question the impugned notice in a Civil Court.

53. Since the learned Counsel for the parties have been elaborately heard on each and every factual as well as legal aspect on merits, the appeal needs to be finally disposed of.

54. For the foregoing reasons, in my view, the impugned order needs no interference in appeal. The respondents are at liberty to proceed further in accordance with law.

55. Upshot of the discussion and observations made hereinabove is that the appeal is devoid of merits and stands dismissed.

56. In the circumstances, there is no order as to costs.

57. In view of dismissal of the appeal, pending applications, if any, shall stand disposed of.

[PRITHVIRAJ K. CHAVAN, J.]