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V/s.

1. Municipal Corporation of Greater Bombay through the Municipal Commissioner, having his office at BMC Building, Mahapalika Marg, Opp. CST Railway Station, Mumbai – 400 001.
2. Designated Officer – II, attached to the Office of Asstt. Commissioner,

SUMEDH
NAMDEO
SONAWANE

"G/S" Ward Office Building,]	
N.M. Joshi Marg, Elphinstone,]	
Mumbai – 400 018.]	... Respondents

Mr. Navroz H. Seervai, Senior Advocate, a/w Mr. Akash Rebello, Mr. Vishal Hegde, Mr. Parag Khandar, Mr. Tapan Radkar, Adv. R.P. Shirole, Mr. Nadeem Shama, Adv. Deepakar Livingston, Adv. S.V. Rao, Ms. Aishwarya Jose, Mr. Parth Lalai, Adv. Leemai, Ms. Anuja Apte and Mr. Paras Gosar, i/by Samudra Legal for the Petitioners.

Mr. G.S. Godbole, Senior Advocate, a/w Ms. R.M. Hajare, i/by Adv. Komal Punjabi for Respondent Nos.1 and 2.

Mr. Abhay Pednekar, A.E. (B&F), G/S Ward, present.

Mr. Pingat, J.E. (B&F), G/S Ward, present.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.**

RESERVED ON : 3rd April, 2025.

PRONOUNCED ON : 9th May, 2025.

Judgment (Per : Kamal Khata, J) :-

1) This Writ Petition under Article 226 of the Constitution of India, challenges the Notice dated 9th January, 2025 issued under Section 351(1A) of the Mumbai Municipal Corporation Act, 1888 ('BMC Act') and the Order dated 21st February, 2025 thereof issued by the Brihanmumbai Municipal Corporation ('BMC'), which the Petitioners contend are illegal, violative of Articles 14, 19(1)(g), 21 and 300A of the Constitution of India.

BRIEF FACTS:

2) M/s. Modern Paint And Auto Corporation, Petitioner No.1 is a partnership firm and Petitioner Nos.2 and 3 being its partners, operate an auto workshop for M/s. Mercedes Auto Hangar. They assert that their

premises constitute a tolerated structure existing prior to the datum line of 1st April, 1962, for non-residential structures, as supported by Tikka Sheets of Cadastral Survey (1935, 1952 and 1969) and BMC Assessment Records.

3) Mr. Navroz Servai, learned senior counsel for the Petitioners, argues that the BMC failed to provide a fair hearing and disregarded material evidence, including factory licenses valid until 31st December 2027. He contends the Notice is jurisdictionally defective, motivated by an ulterior motive.

3.1) Mr. Seervai, learned counsel for the Petitioners, narrated the facts outlined in the Petition, asserting that the structures in question predate 1961. He explained that until 1958, the property was owned by the Scindia family and had been in existence since 1915. Around 1958, a portion of the Scindia family estate was leased to the Amateur Rider's Club and the premises came into the exclusive possession of one Mr. Feroz Cama, who held a rent receipt for the property issued in his name. The estate, now commonly known as Shivsagar Estates, has a well-documented history.

3.2) He argued that, the issuance of Notice under Section 351(1A) of the Mumbai Municipal Corporation Act, 1888 ('BMC Act') was itself a nullity as it has failed to comply with the mandatory requirement prescribed under the law. He further submitted that, the Petitioners had not undertaken any substantial alterations to the structure, except for tenantable repairs necessary to maintain the premises in line with the

specifications required for operating a Mercedes-Benz workshop. He emphasized that the present Notice was served on the Petitioners for the first time after over 65 years since the structure was constructed.

3.3) Mr. Seervai argued that, the plan of Poonam Chambers, which was relied upon for issuing the impugned Notice, was never presented to the Petitioners, thereby depriving them of an opportunity to address or contest its contents. He further contended that, reliance on a private plan of 1975 for the sanctioning of Poonam Chambers was fundamentally flawed, as the Tikka Sheets from the Cadastral Survey—dating back to 1935, 1952, and 1969—clearly demonstrated the existence of the Petitioners' premises before the date of the plan being relied upon. Moreover, the Assessment Sheets maintained by the BMC themselves established that the premises existed prior to 1961-62.

3.4) Mr. Seervai submitted that, the Petitioners promptly responded to the impugned Notice with an initial reply on 13th January, 2025, followed by a comprehensive response on 17th January, 2025. In these responses, the Petitioners provided sufficient cause, addressed all allegations raised in the Notice, and furnished supporting documentary evidence to substantiate their claims. Despite requesting a personal hearing, which is an essential aspect of natural justice, the BMC failed to grant them such an opportunity.

3.5) Subsequently, on 5th February and 10th February, 2025, the Petitioners submitted additional reply and representations to further establish the legality of the premises. On 11th February, 2025, they made a detailed representation to the Assistant Engineer of the Building Proposal Department, BMC explaining the lawful status of the structure. However, in the absence of any response, they were compelled to approach the Deputy Municipal Commissioner (Zone-2) of the BMC on 20th February, 2025, and the Municipal Commissioner on 25th February, 2025. Despite their diligent efforts, no response was received from the concerned authorities.

3.6) Mr. Seervai forcefully argued that, the Municipal Assessment Records, being official documents generated by statutory authorities, possess substantial evidentiary value and are presumed to be accurate unless specifically disproven. He further emphasized that, factory licenses have been issued for the premises, which remain valid until 31st December, 2027, along with various other documents unequivocally demonstrating the existence of the structure prior to the established datum line.

3.7) According to Mr. Seervai, the Notice suffers from an inherent jurisdictional defect, lacking any cogent legal basis for demolition and appearing to be a mechanically issued directive. He asserted that, the issuance of the Notice was driven by an ulterior motive and served a collateral purpose not contemplated by the statute but possibly instigated by a third party with vested interests aimed at harassing the Petitioners. He

further alleged that the BMC had selectively relied on certain plans while deliberately excluding the Petitioners' premises, thus undermining the fairness of the proceedings. Ultimately, on 21st February, 2025, the impugned Order was issued, directing the demolition of the structure within 15 days. This abrupt decision, without granting the Petitioners a fair opportunity to be heard, stands in violation of the principles of natural justice.

4) Mr. Girish Godbole, learned Senior Counsel for the BMC, submitted that, the Notice and the impugned Order were issued and passed in accordance with the law. He drew our attention to the photographs and the schedule of the Notice dated 9th January, 2025, asserting that the Petitioners had undertaken unauthorized construction, including the addition of a mezzanine floor, and had made substantial alterations to the existing structure without obtaining prior permission or sanction from the BMC.

4.1) Mr. Godbole emphasized that, the BMC had adhered to all necessary procedures before issuing the Notice and passing the Order. He maintained that, the authorities had duly considered all documents submitted by the Petitioners but found them insufficient to justify the unauthorized alterations. He concluded by asserting that the Petition lacks merit and deserves to be dismissed.

5) We have heard both the senior counsels and perused the record

and documents before us.

REASONS AND CONCLUSIONS:

6) Our Court regularly addresses grievances from two classes of citizens: (i) scrupulously following Rules and Regulations of the land, and (ii) those who blatantly violate them and subsequently raise specious pleas to justify their actions. This case pertains to the later one.

7) Upon examining the photographs and documents on record, certain structure/s may have been in existence prior to datum line. We posed a query to Mr. Seervai regarding whether the Petitioners had applied for and obtained permissions for the alterations they claimed were mere tenantable repairs. Upon seeking instructions, Mr. Seervai candidly submitted that, no permissions were sought or granted, as the Petitioners believed the works were limited to tenantable repairs. However, in our view, the nature of the work undertaken extends far beyond the scope of tenantable repairs. Illustratively, the construction of a mezzanine cannot reasonably be classified as a tenantable repair. The Schedule to the Notice at page 55 clearly discloses all that was considered illegal and for which no permissions were sought.

8) In the present case, it is evident that the Petitioners have, under the guise of tenantable repairs, undertaken extensive and unauthorized alterations. While there is nothing inherently wrong with improving the facade of an old structure, such improvements cannot be used as a pretext

to alter the core structure in a manner that transforms its fundamental character. Here, extensions have been made on such a scale that it is difficult, if not impossible, to distinguish between the old and the newly constructed portions. Accordingly, we find no infirmity in the BMC's Notice. Courts cannot extend protection any part or portion of unauthorised construction under the pretext of it being a part or portion of a "tolerated structure". Very often the Corporations do not have any record of the dimensions of the so-called "tolerated structures". The absence of these records is frequently exploited, resulting in entirely new structures under the false pretense of being a part of a pre-existing tolerated structure.

9) We are compelled to acknowledge that a significant number of citizens avoid approaching the BMC for permissions. This raises pertinent questions: Are the procedures excessively lengthy? Are the Officers uncooperative? Or are there other factors discouraging citizens from seeking approvals? These are critical concerns that the BMC must reflect upon and address to enhance its public image.

10) In our view, the actions of the BMC lack justification when they selectively target certain sections of society while turning a blind eye to blatant encroachments that mar the city's aesthetics and violate the law. The Courts have consistently upheld the principle that unauthorized constructions and illegal structures must be removed, irrespective of the identity of the occupants. However, it is regrettable that only a limited

number of illegal constructions are brought to the Notice of the Courts, and consequently, only those are acted upon. The vast majority of unauthorized structures in the city remain untouched because no complaints are filed against them.

11) This inconsistency in action creates an environment where citizens, such as the Petitioners, feel unfairly targeted and believe that the authorities are acting at the behest of third parties with vested interests aimed at harassing them. While such apprehensions may not be entirely unfounded, this Court is bound by the law and cannot shield or condone illegalities or unauthorized constructions, regardless of the party involved. The law must be applied uniformly, and no individual or group can be placed above it.

12) An unauthorized structure/s cannot be tolerated and is liable to be demolished. Nevertheless, the BMC must exercise due caution. The demolition should be limited to unauthorized structure/s or extension/s and should not affect the original structure or any legitimate tenantable/permissible repairs. Therefore, the BMC is directed to ensure that only unauthorized construction/s or extension/s are removed, while legitimate/permissible repairs are left undisturbed.

13) The Petition is accordingly disposed off in aforesaid terms.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)

14) At this stage, learned Advocate appearing for the Petitioners submitted that, the Petitioners would like to challenge the Judgment before the Hon'ble Supreme Court and its effect and implementation may be stayed for a period of two weeks from today.

15) At the request of learned Advocate for the Petitioner the effect and implementation of present Judgment is stayed upto 26th May, 2025.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)