IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 3011 OF 2020

Ms Kangana Ranaut ...Petitioner

versus

Municipal Corporation of Greater Mumbai & anr. ...Respondent

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Advocate for Respondents

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 3011 OF 2020

Ms Kangana Ranaut

versus

Municipal Corporation of Greater Mumbai & anr. ...R

AFFIDAVIT ON BEHALF OF THE MUNICIPAL CORPORATION OF GREATER MUMBAI FOR OPPOSING ADMISSION AND APPLICATION FOR INTERIM RELIEFS.

I, Mr. Bhagyavant Late, The Designated Officer, H West Ward, MCGM having my office at H West Ward Office, St, Martins Road, Bandra West, being an officer of the Respondent MCGM, do hereby state on solemn affirmation as under:-

1. I say that I have read the copy of the present petition and annexures thereto and I am aware of the facts and circumstances of the present case on the basis of records available in my office and I am authorized to depose in respect of the same.

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2. I say that the present Affidavit is being filed for the limited purpose of placing on record relevant facts and material to oppose the admission of the Petition and the grant of any interim / ad-interim reliefs . I am accordingly not dealing seriatim with all the incorrect allegations & submissions made in the Petition and I should not thereby be deemed to have admitted the same. I crave leave to file an additional affidavit if required and necessary.

3. At the outset I say and submit that the Writ Petition and the Reliefs sought for therein constitute an abuse of process,

inasmuch as the record establishes that as part of work which was ongoing in the premises, the Petitioner has unlawfully made substantial alterations and additions to the property, contrary to the sanctioned Building Plan. Details of these unlawful alterations and additions details were listed at (a) to (k) of the Notice issued to the Petitioner under Section 354A and included construction of new toilets, [including in open chowk area and in parking area], conversion of existing toilets into cabins / rooms, construction of pantry, kitchen, cabins etc. Both in her Advocates Reply dtd 08.09.2020 and **even in the present Writ Petition, the Petitioner has not disputed carrying out the said unlawful alterations and additions. In fact having regard to the work carried out and the contents of the sanctioned Plan, there is no basis for the Petitioner to dispute the unlawful work carried on.** The Petitioner has only made false, baseless and unwarranted allegations of "harassment" and "malafides". It is respectfully submitted that the Petitioner who has in the course of her work, illegally carried out such substantial unlawful additions and alterations, contrary to the sanctioned Building Plan, should not be permitted to seek relief designed to protect such unlawful work, by approaching this Hon'ble Court by a writ petition under Art 226

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4. The brief facts pertaining to the present petition are as under:

(a) I say that, the Building Mukkadam of the Respondent Corporation, in the course of routine inspection in the area on 05.09.2020, noticed construction work taking place at the said property of the Petitioner being Bungalow No. 5, Chetak Row House, 41, Nargis Dutt Road, Pali Hill, Bandra (West), Mumbai –

400 050. A Detection Report was prepared by the aforesaid officer on 05.09.2020 at about 1:00 pm.

(b) Pursuant to such Detection Report, a team of officers comprising of the Designated Officer; H/West Ward, Assistant Engineer (B&F) H/W, Sub Engineer (B&F) H/W, Sub Engineer (Building Proposal) H/W, Building Mukaddam and labour of the Building Dept., visited and inspected the said property. It is pertinent to note that, the Designated Officer carried out inspection on the site by verifying the construction on the site with the contents of the sanctioned plan of the said property. At the time of inspection, workmen, materials & tools were also found present and work was found to be going on in the property. A detailed inspection found that substantial additions and alterations were carried out in the property contrary to the sanctioned Plan. Photographs of the unlawful work carried out were also taken. The said officer prepared an Inspection Report dated 07.09.2020 which recorded details of the unauthorised work being carried out contrary to the approved plans. Hereto annexed and marked as "**Exhibit A**" is a copy of the Site Inspection Report dated 07.09.2020 alongwith the photographs taken during the site inspection on 07.09.2020. The said inspection report was uploaded on the RETMS online system by the Field Officer vide ref no. 112126 dated 07.09.2020 at 03:27 pm. Hereto annexed and marked as "**Exhibit B**" is an extract of the Inspection report uploaded on the RETMS system.

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(c) In view of the above, Notice u/s 354A of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as "the MMC Act" for short) dated 07.09.2020 was issued to the Petitioner on 08.09.2020 at about 10:00 am detailing the substantial

alterations & additions unlawfully carried out including construction of new toilets, [including in open chowk area and in parking area], conversion of existing toilets into cabins / rooms, construction of pantry, kitchen, cabins etc.. By the Notice, the Petitioner was required to produce authorisation/ permission for such work within 24 hours , failing which the same would be removed or pulled down without further Notice. The Petitioners representative / person present at the suit property however refused to accept the notice, and the same was accordingly pasted on the premises on 08.09.2020. Hereto annexed and marked as **"Exhibit C"** is a copy of the Notice issued u/s 354A of the MMC Act, 1888.

(d) On 08.09.2020 at around 4:00 pm , the Petitioner through her advocate submitted a reply making incorrect and baseless allegations of trespass and intimidation. By the Reply the **Petitioner did NOT dispute that the said substantial work of** alterations and additions contrary to the Sanctioned Plan was carried out, but sought 7 days to respond to the Notice. Therefore, the Petitioner failed to comply with the notice issued by the Respondent Corporation.

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(e) The said reply was uploaded on the RETMS system and forwarded for scrutiny to the concerned Designated Officer. In view of the fact that the Petitioner had not disputed the work carried on [of substantial alterations and additions] contrary to the sanctioned Plan and had not referred to any permission for the same, the Designated Officer passed an order on 09.09.2020 confirming the notice issued u/s 354A of the MMC Act directing demolition of the work of additions and alterations being carried on contrary to the Sanctioned Plan. Hereto annexed and marked as **"Exhibit D"** is a copy of the Order dated 09.09.2020.

(f) I say that, the said Order was communicated to the advocate of the Petitioner via email on 09.09.2020 and was also pasted on the site on 09.09.2020 in the morning.

(g) In view of the above, panchnama was prepared on the site in the presence of the officers of Khar police station at about 10:55 am on 09.09.2020. Demolition of the work of unlawful additions and alterations was commenced in the presence of Khar police station staff and the concerned officers of the H/West Ward at 11:00 am. A substantial part of the illegal work carried out on the suit property was demolished by the time intimation was received that this Hon'ble Court had directed stay of the demolition work.

5. I say that, it is apparent that the Petitioner has being carrying out substantial work of alterations and additions in the property, contrary to the sanctioned Plan, without even seeking permission for the same. The unauthorised and unlawful nature of the said alterations and additions [as being contrary to the sanctioned Plan] are clearly established on the record. In fact to date the Petitioner, both, in her Advocates Reply and even in the present Petition has not denied / disputed having carried out such unlawful work of additions and alterations. The Petitioner has only made baseless and false allegations of harassment & malafides.

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6. It is respectfully submitted that the Petitioner who has in the course of her work , undisputedly carried out such unlawful substantial additions and alterations, contrary to the sanctioned Building Plan , is not entitled to seek relief from this Hon'ble Court by a writ petition under Art 226

7. I now proceed to offer my parawise comments to the averments contained in the petition.

8. With reference to paragraph 1 to 4 of the petition, I say that the Petitioners allegations / comments re " certain issues" and other matters , are not relevant for the present Petition , and the issue of the Petitioner carrying on illegal construction work.

9. With reference to paragraph 5, I say that, the contents thereof are denied as false and misleading. I deny that the officers of the Respondent Corporation entered the premises by threatening and / or roughing up the Security Guard and / or any other staff members in the suit property. In fact on the 5th and 7th the Officers requested and were given entry into the premises by the Petitioners representative / person present : Mr Nikhil Surve, whose name and number have been noted in the on site Report.

10. With reference to paragraph 6 to 9 , I say that, the allegations made therein regarding the basis / cause of the Notice issued to the Petitioner , are false . The Petitioner is seeking to obfuscate and cover up her flagrantly illegal acts [of unlawfully making substantial additions and alterations contrary to the sanctioned Plan , without any permission whatsoever] by making baseless and wild allegation of malafide etc. The Notice issued under sec 354A specifically lists in detail the work of additions and alterations carried out contrary to the Sanctioned Plan.

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11. With reference to paragraph 10, I say that the contents thereof are denied . I deny that from the contents of the Notice the Petitioners are unable to comprehend the details and / or that the same requires expert consultation. The Notice specifically details at Sr Nos 1(a) to (n) thereof the substantial alterations & additions unlawfully carried out including construction of new toilets, [including in open chowk area and in parking area] ,

conversion of existing toilets into cabins / rooms , construction of pantry , kitchen , cabins etc.

12. With reference to paragraph 11, I deny that the notice has been issued without application of mind, in violation of the principles of natural justice , or that it is unreasonable or improper as alleged or otherwise.

13. With reference to paragraph 12, the contents thereof are denied as false and incorrect. I deny that the Petitioner is entitled to a personal hearing or that the principles of natural justice have been violated. I say that pursuant to issuance of Notice u/s 354A and as contemplated therein , the Petitioner was given an opportunity to produce any permission or authorisation for the work detailed therein. To date the Petitioner has not disputed carrying out such unlawful work nor produced any authorisation for the same. I say that it is settled law that personal hearing is not a matter of right and in this case the Petitioner and her staff were even avoiding the service of notice, and therefore cannot claim personal hearing as a matter of right.

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14. With reference to paragraph 13, I say that the contents thereof are denied . I deny that in reality the Petitioner was not carrying out any work at the suit property. Photos taken in the premises on the 7th September 2020 showed the presence of workmen , with implements & materials . Therefore, the Petitioner has made false and incorrect statements and has not approached this Hon'ble Court with clean hands.

15. With reference to paragraph 14, I say that the contents thereof are denied as false and incorrect. I reiterate that the notice u/s 354A of the MMC Act has been issued after following the due process of law as set out hereinabove.

16. With reference to paragraph 15, I say that the contents thereof are denied as false and incorrect. There is no non application of

mind, lack of particulars or breach of principles of natural justice as has been falsely alleged. It is reiterated that the Notice specifies in detail the unlawful work carried out. In the circumstances of the case and the express terms of sec 354A , 24 hours is neither perverse nor malafide.

17. With reference to paragraph 16, I say that, the contents thereof are denied as false and otherwise also devoid of merit. I say that, the allegation of malafide are false and misconceived . The action taken by the Respondent No. 1 and 2 under section 354A of the MMC Act is in accordance with the statutory requirement and after following the due process of law.

18. With reference to paragraph 17, I say that the contents thereof are denied as false and incorrect. I say that, the Petitioner has not made out any case for relief from this Honble Court. In fact it is reiterated that the Petitioner who has flagrantly sought to carry out substantial unlawful additions contrary to the Building Plan , is not entitled to seek to protect / preserve the same by seeking relief under Art 226. The present petition is misconceived, and devoid of any merit and liable to be dismissed with costs. Significantly , the petitioner has not sought any reliefs qua the Notice dated 07.09.2020 issued u/s 354A of the MMC Act and / or any interim reliefs qua the same.

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19. With reference to paragraph 18 to 21 , I deny the contents thereof and say that, the demolition action has been undertaken by the Respondent Corporation on 09.09.2020 as stated hereinabove and the illegal / unauthorised works have been substantially demolished after following the due process of law. I say that if the person fails to stop work even the MCGM policy circular specifies that "such construction should be removed forthwith on expiry of **notice period of 24 hours**". Herewith

annexed and marked as **EXHIBIT E** is a copy of the MCGM policy circular dated 15.03.2012.

20. In view of the above, I humbly submit that petition is liable to be dismissed as such.

Date: 10th September 2020

Adhate 10/9/2020

Advocate for Respondent

Respondent

Drafted by Joel Carlos, Advocate

Drafted vetted by Senior Counsel Aspi Chinoy and Senior Counsel Anil Sakhare

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VERIFICATION

I, Mr. Bhagyavant Late, The Designated Officer, H West Ward, MCGM having my office at H West Ward Office, St, Martins Road, Bandra West, Mumbai do hereby state on solemn affirmation that whatever stated in forgoing para's are true and correct in my personal knowledge and same believe true and correct.

Solemnly affirmed at Mumbai)

Dated 10th day of Sep /2020)

Identified be me

Adhate 10/9/2020

Advocate for Respondent MCGM.

Noted & Registered
Reg. No. 5
Page No. 16 | 106
Date 10 | 9 | 2020

BEFORE ME

Before me, [illegible]

S. C. SAWANT
B.Com. L.L.B.
NOTARY GOVT. OF INDIA
Regd. No. 15639
101, Visaria Chambers, 1st Floor,
74, Janmabhoomi Fort, Mumbai-1.

ORIG. PANCARD / AADHAR CARD / DRIVING LICENCE VOTERS ID No. 85317445 SEEN & RETURNED.
5800

NOTARY S. C. SAWANT Gr. Mumbai Maharashtra Reg. No. 15639 Exp. Date 26/11/2024 GOVT. OF INDIA NOTARIAL NOTARIAL

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Exh-'A' [illegible] Exh-'A'

Inspection Report

Date :- 07/09/2026

Name :- Shri D. A. Waghmare (S.E)
Shri B. V. Late (EE/Do)
Shri L. A. Kolekar (A.E II (B&F) H/L
Shri C. V. Keluskar (Mukadam)
Shri Dinkar Nikalje (Labour)

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During inspection, following discrepancies observed beyond approved plan.

I) Ground floor -

a) Toilet is converted into office
b) New toilets are constructed at beside staircase inside store & another ~~at~~ in parking area
c) Pantry partition in parking area
d) U/a additions & alterations with partition walls.

II) First floor -

a) Unauthorised room/cabin with wooden partitions made in living room
b) One meeting room/cabin made in Pooja room
c) Unauthorised construction of toilets in open chowk area with B.M walls
d) Unauthorised extension of slab in frontside adm 2'6"

III) Second floor –

a) Staircase orientation is changed.

b) Balcony found enclosed in habitable area by removing dividing walls.

c) Unauthorised extension of slab at front side adm 3'0".

d) Bedroom of adjoining row house no. 4 is merged ~~by~~ into row house no. 5 by removing partition wall.

e) Toilet of adjoining bedroom is found removed & same area used as habitable area.

At first & second floor, internal renovation, finishing work is found in progress. Position of entrance gate at ground floor is changed.

Nikhil Surve 9967591629

Nikhil

M.B Conda — [signature]

[signature] S.E(B) [signature] AE-II [signature] 07.09.2020 EE DO HW

[signature] M.C.

Exh-'B'
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MUNICIPAL CORPORATION OF GREATER MUMBAI
REMOVAL OF ENCROACHMENT DEPARTMENT

Complaint No : HW/100/07-09-2020/287

FIRST INSPECTION REPORT

1) Reference No : 112126

2) Owner/Occupier restrict (Refused) to enter in premises(Access Denied) : No

3) Time and Date of Detection : 07/09/2020 15:27:06

4) Name & Description of the Inspection Officer : . . .

5) Work Status : Ongoing

6) Ownership of Land : Private

7) SubType of Land : Private

8) Ownership Vested With : Others

9) Planning Authority : MCGM

10) City Survey Number : not known

11) SAC Number Is Available : No

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Maharashtra
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11) Inspection Image :.

12) Location : Bungalow no. 5, Chetak CHSL, 41, Nargis Dutt Rd, Pali Hill, Mumbai, Maharashtra 400050, India

13) Latitude and Longitude of Location : (19.068381666666667, 72.82840166666666)

14) Stage And Construction of Material Used :

Sr. No.	Name	Structure Length (mtr)	Structure Width (mtr)	Structure Height (mtr)	Structure Material Remark
1	Others	0.1	0.1	0.1	Unauthorised construction, addition, alteration and amalgamation work is in progress at G+2 Bungalow no. 5 without any permission from competent authority.

15) Whether the Construction is an extension to the existing structure or an independent structure : no

16) Whether the Construction is in the nature of addition & alteration to the existing structure : no

17) Whether the construction is in nature of repair to the existing structure : no

18) Whether any permission for Construction was shown on site : no

19) Measurements of Unauthorized construction was taken on site : yes

20) In case the structure was detected earlier and the Notice was issued under sec. 354-A, the details of person on whom the notice was served : no

21) If so, the details of action taken on earlier notice : no

22) Interim injunction if any, Date and details (Court no., date of order and validity) : no

23) Whether the structure is occupied & if yes since when & the name(S) of Occupier : no

24) Name (s) & Address (es) of the owner (s) Of the structure :

Sr. No.	Type	Name	Address

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1	Occupier	Kangana Ranaut	Bungalow no. 5, Chetak CHSL, 41, Nai Dutt Rd, Pali Hill, Mumbai, Maharashtra 400050, India

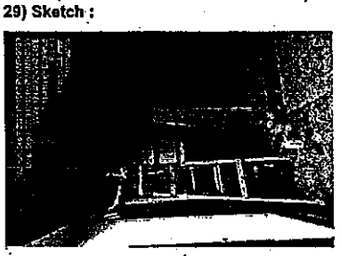
25) Use of the Structure : Commercial

26) Whether the structure is Huge or Small :

27) Description of Structure : Unauthorised construction, addition, alteration and amalgamation work is in progress at G+2 Bungalow no. 5 without any permission from competent authority.

28) Details about the Assessment Of the structure if available : not known

29) Sketch :



30) Area of Plinth (meter) : 0.0

27) Area of constructed structure (meter) : Unauthorised construction, addition, alteration and amalgamation work is in progress at G+2 Bungalow no. 5 without any permission from competent authority.

32) Remark : It is proposed to issue notice. Submitted please.

33) Panchnama :

Dt- 08/09/2020 34

Pasted on site

Time - 10:03 am

Exh-'C'

MUNICIPAL CORPORATION OF GREATER MUMBAI

STOP WORK NOTICE UNDER SECTION 354 (A) MUMBAI MUNICIPAL CORPORATION ACT

Notice No.:HW/DO2HW/100/354A-MMC ACT/HW287N01/07-09-2020 Date: 07/09/2020

Ref No.: 112126

NOTARY
S. C. SAWANT
Gr. Mumbai
Maharashtra
Reg. No. 15659
Exp. Date
26/11/2024
GOVT. OF INDIA

To,

Owner/Occupier,
Ms. Kangana Ranaut,
Bungalow no. 5,
Chetak Row House,
41,
Nargis Dutt Rd,
Pali Hill Bandra west,
Mumbai-400050

WHEREAS UNDER SECTION 351(1) of the Mumbai Municipal Corporation Act, 1888 & as per the notification dt. 4th April, 2013 under No. DMC/RE/010, the Municipal Commissioner for Brihanmumbai Municipal Corporation has duly appointed me as Designated Officer for Municipal Ward Ward H/west of Brihanmumbai Municipal Corporation to exercise the powers and functions conferred upon him under section 354(A) of the M.M.C. Act, 1888 and whereas I am satisfied that you have unlawfully commenced/been unlawfully carrying on, erection of building/erection of work described in the Schedule below located at above mentioned address

1.Schedule (Description of work)

Ongoing renovation and finishing work to the unauthorised portion at above premises which is beyond approved B.C.C plan bearing no. CE/4349/BSII/AH dated 07.03.1979.

However, during inspection following works are observed beyond approved B.C.C plan bearing no. CE/4349/BSII/AH dated 07.03.1979.

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

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k) Unauthorised horizontal extension of slab at front side admeasuring 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 directed 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 serviceof 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)

Executive Engineer (D.O.)
(B&F) H/West

Signature:.....

Name :.....Late B. V.

Designated Officer : Executive Engineer (O.D.) (B&F) H/west,

Asst. Engineer (B&F)-I,II,III,IV/Ward H/west

08/09/2020

Pasted on site @ Time - 10:03 am

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To,

Duty Officer,
Khar Police station

With reference to above notice, I am satisfied that the below mentioned persons have unlawfully carried out/or been unlawfully carrying on erection of building/unauthorised work located at the above address.

1. Therefore,in exercise of my powers under section 354(A)(b)(2), I direct that above persons should be driven out by you or your officer from place of the site mentioned above.

2. There is likely that even after removal of persons the execution of work may be undertaken with some other person hence you are requested to keep vigil and similar action should be taken against them also.

3. A report on above please be sent to this office for further action.

4. You are also requested to provide police force for undertaking demolition.

5. If you find the person is habitually involved in such activities, you are also requested to initiate proceeding under MPDA and other act.

8/9/2020 1030hrs

RECD
Despatch
Khar Police Stn.,
Mumbai.

Signature:..... 07.09.2020

Name :..... Late B.V.

Designated Officer Executive Engineer (D.O.)
(B&F) H/West
Asst.Engineer (B&F)-I,II,III,IV/Ward H/west

O/C.

Exh - 'D'
Posted on Board. 09/09/2020

MUNICIPAL CORPORATION OF GREATER MUMBAI

Complaint No :HW/100/07-09-2020/287 Notice No: HW/DO2HW/100/354A-MMC ACT/HW287N01/07-09-2020

Ref No.: 112126

Speaking Order Date: 09/09/2020

Ward Address: H/W ward office Bldg, Saint Martin Road, Behind, Bandra Police Station , Bandra (West), Mumbai-400 050

NOTARY S. C. SAWANT Gr. Mumbai Maharashtra Reg. No. 15539 Exp. date 26/11/2024 GOVT. OF INDIA

To,
Owner/Occupier,

Ms. Kangana Ranaut,
Bungalow no. 5 Chetak Row House,
41 Nargis Dutt Rd,
Pali Hill Bandra west,
Mumbai-400050

Subject : HW/DO2HW/100/354A-MMC ACT/HW287N01/07-09-2020 pasted on 08.09.2020.

Reference: Reply of Advocate Mr. Rizwan Siddiquee on behalf of the noticee (Ms. Kangana Ranaut) dated 08.09.2020.

With reference to above subject, I have gone through all the action papers produced before me. I have also gone through reply dated 08.09.2020 through Advocate Mr. Rizwan Siddiquee.

After scrutinizing all the papers and on site visit inspection, I am satisfied that the work mentioned in the notice schedule found is in progress. I have also gone through your reply dated 08.09.2020 through Advocate Mr. Rizwan Siddiquee. The allegations in the reply are found baseless and there is no substance therein. Further, as per the directions in the notice you have failed to produce any permission/approval/sanction to changes in approved B.C.C plan vide no. CE/4349/BSII/AH dated 07.03.1979 as mentioned in the notice schedule.

It has been noticed that, after receipt of the notice you have not stopped carrying the work and continued the work. Under this circumstances your request for maximum 07 days to respond to and duly addressed is rejected herewith.

Therefore, I proceed to pass the order.

ORDER

The reply filed by you dated 08.09.2020 through Advocate Mr. Rizwan Siddiquee is rejected. I am satisfied that you are carrying the work as mentioned in the notice schedule. Further you have failed to produce the permission/approval/ sanction to changes in approved B.C.C plan vide no. CE/4349/BSII/AH dated 07.03.1979 for work. Therefore, work carried out by you as mentioned in the notice schedule is declared as unauthorized. Further, I am satisfied that you have not stopped the work. Therefore, the notice structure as mentioned in the schedule of the notice is liable for forthwith demolition at your risk, cost and consequences thereon.

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Further note that under section 475-A of M.M.C. Act, you shall be punished with imprisonment for a terms which shall not be less than one month but which may extend to one year and with a fine which shall not be less than five thousand rupees but which may extend twenty five thousand rupees and in the case of continuing offence with further daily fine which may extend to five hundred rupees.

09/09/2020

Designated Officer

Ex. ~~Asst.~~Engineer (B&F) Ward H/west

Executive Engineer (D.O.)

(B&F) H/West

O/C

ಅಸಿಸ್ಟಂಟ್ ಎಂಜಿ

(EE(B))

Exh- E

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NOTARY
S. C. SAWANT
Gr. Mumbai
Maharashtra
Reg. No. 5639
Exp. Date
26/11/2024
GOVT. OF INDIA

MUNICIPAL CORPORATION OF GREATER MUMBAI

CIRCULAR

DMC/ RE/6618 Date 15.03.2012.

Sub : Procedure for action to be taken under relevant provisions of MMC Act for demolition of unauthorized structures.

The Corporation has earlier issued circulars under No. WO/RE/OD/303 dt. 11/08/2000 & LEA 1865 dated 29.4.2006 for guidance of staff. However, it is observed that the above mentioned guidelines needs revisions to effectively prevent unauthorized construction, activity and encroachment, as such fresh guidelines are warranted.

Following instructions are therefore issued in supercession of instructions contained in Circular dated 11/08/2000 & dated 29/04/2006 quoted above for concerned staff to follow carefully. Failure to observe these instructions will be viewed seriously. -

A. FOR ONGOING UNAUTHORIZED CONSTRUCTION:-

1. When any unauthorized construction is in progress contrary to the provision of section 342 and 347 of the MMC Act and where change in foundation, plinth or structural addition, alteration, load bearing walls endangering the life and property of the occupiers or other persons is detected during the usual round of inspection or on receipt of complaint from any member of the public, the concerned officer detecting such unauthorized work under construction shall take photographs showing the date and status of the work and prepare a panchanama/ Inspection Report of the work in progress. The officer shall then immediately take entry in detection register and prepare a notice under section 354A of the MMC Act showing rough sketch of unauthorized construction, take signature of the officer authorized to sign such notice and serve it on the person/ owner carrying out such construction. Date of service of the notice should be recorded near the acknowledgment of service. Attempt should be made to paste a notice on the premises, if the same is not received by owner/person doing unauthorized construction. Copy of the said notice be sent to the local police station, for registering the complaint.

2. If the unauthorized construction is not stopped and/or permission obtained from the competent authority for erection of such construction is not produced within 24 hours from the service of the notice under section 354A of the MMC Act then, the authorized officer empowered should pass an appropriate order for demolition and such construction should be removed forthwith on expiry of

[illegible] period of 24 Hours. The material, machinery, equipment/devices or [illegible] used for the process of erection of the unauthorized construction should be removed after drawing a panchanama/inventory by taking photographs at [illegible].

3. On service of notice under section 354A of the MMC Act, if the addressee submits his reply along with the permission obtained for the subject construction before expiry of 24 hours from the time of service of notice such reply and documents shall be examined and if the documents submitted do not contain any approval from the competent authority or the said work, reasoned short order for demolition be passed at the expiry of notice period and immediately unauthorized construction shall be removed/demolished.

4. During Court stay order, if owner/occupier of structure under reference is carrying out further unauthorized work, then in such cases, again notice under Sec. 354 A of 24 hours mentioning earlier notice with background and reason shall be issued for additional work over and above the work mentioned in the earlier notice (as per procedure mentioned in clause A (1) herein above) and such additional work shall be demolished (as per procedure mentioned in clause A (2) herein above).

5. If notice under section 354A of the MMC Act, 1888 is issued to ongoing unauthorized construction and same could not be demolished due to court stay order, then in such case, as soon as the Stay Order is vacated the unauthorized construction shall be demolished. There is no need to issue further notice for demolition. It is pertinent to note that notice under section 354A itself is due process of law and in such cases, no fresh notice under section 351 of MMC Act needs to be issued before demolition.

B. <u>FOR EXISTING UNAUTHORIZED CONSTRUCTION:-</u>

1. In the cases of existing unauthorized construction a notice under section 351 of the MMC Act shall be served giving 7 days time to the owner / occupier of unauthorized construction to show that the work mentioned in the notice is carried out in accordance with the provisions of section 337, 342 and section 347 of the MMC Act. If the party does not submit any document or the documents submitted do not prove the authorization or tolerance of the structure a reasoned order shall be passed by the Assistant Commissioner and dispatched by [illegible] day time to the owner/occupier to demolish the unauthorized structure [illegible] at the party to do so it shall be removed/demolished at the expiry [illegible] passing of reasoned order.

[illegible] cases where the unauthorized construction as per Clause B (1) above was

re-established departmentally by following due process of law and has again been detected within a period of one year without valid permission, it should be demolished by giving a short notice of 24 hours (not 7 days again) as per the judgment in Sopan Maruti Thopter case reported in AIR 1976 Bombay

C. GENERAL CLAUSES:-

1. In failure to comply with the order of demolition by owner / occupier of unauthorized construction, copies of necessary papers shall be sent to the Legal Assistant / A.L.O. of the ward for prosecution under section 475A of M.M.C. Act. The Legal Assistant of ward shall immediately lodge prosecution on receipt of the papers. Any further information and papers required for prosecution shall be provided by A.E.(B&F).

2. The registers relating to detection, notice, court injunction and demolition are very important documents and the entries in them should be made very carefully and meticulously. All detections of unauthorized constructions shall be brought on the detection register the same day so that further course of action on such unauthorized construction can be pursued.

3. In such cases where Hon'ble Court has granted Stay Order against demolition of Unauthorized Construction and if Owner / Occupier of such structure are carrying out further work by violating court Stay Order, concerned A.E.(B.&F) / L.A. / A.L.O. shall file contempt proceeding also before the Hon'ble Court against such owner / occupier besides the action of demolition as per clause A (4) herein above.

4. It is hereby directed that in the cases where notice under section 354 A/ 351 is issued but the party has approached the court of law and obtained Stay Order against demolition, in these cases, the concern officer and Law Officer should take all necessary steps for getting the stay order vacated as mentioned in the office Circular No. DMC/RE/6418 A dated 18/02/2012. Failure to follow the steps mentioned in the Circular dated 18/02/2012, will invite penal action, as mentioned in the said Circular.

5. This circular supersedes to previous circular No. WO/RE/303 dt. 11.08.2000 and LEA 1805 dated 29.4.2006.

sd/ 03.03.12 Law Officer	sd/-03.03.12 DMC (RE)	sd/-03.03.12 DMC(CRA)
sd/-03.03.12 Additional Municipal Commissioner (City)		sd/-03.03.12 Municipal Commissioner

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CIRCULAR

DMC/ BP/6612 Dated: 17/04/2017

1) Addl. Dy. Commissioner (Admn.) & Estate Officer (D.E.)
2) Dy.C.E. (B.P.)
3) CMO (B.S.A.)
4) CVO (Vig.)
5) Addl. CE (Roads & Drainage)
6) Addl. CE (Water)
7) Addl. CE (Elect.)
8) Addl. CE (Plg.)
9) Addl. CE (Arch.)
10) Addl. CE (Water-II)
11) Addl. CE (Drainage)
12) Head (Zone V)
13) Head (Zone VI)
14) C.L.
15) C.L.
16) Dy. E. (Vig/Estate)
20) Dy. E. (Rds & Tr. Bridges)
21) Dy. E. (S.W.D.)
22) Dy. E. (S.P.)
23) Dy. E. (Arch.)
24) Dy. E. (Plg.-II)
25) Dy. E. (W.W.)
26) Dy. E. (B.P.)
27) Dy. E. (E.C.S.)
28) Dy. E. (Water)
29) Dy. E. (W.W.)
30) Dy. E. (Elect.)
31) Dy.E.(B.P.)
32) Dy.E. (Rds & Tr. Bridges)
33) Dy.E. (Plg.-II) City/W.S./E.S.
34) Law Officer
35) P.S. to Hon'ble
36) P.S. to Hon'ble
37) P.S. to A.D.C.
38) P.S. to Addl. CE
39) P.S. to Addl. CE
40) C.A.(W&SB)
41) A.C. 'A' Ward
42) A.C. 'B' Ward
43) A.C. 'C' Ward
44) A.C. 'D' Ward
45) A.C. 'E' Ward
46) A.C. 'F/S' Ward
47) A.C. 'F/N' Ward
48) A.C. 'G/S' Ward
49) A.C. 'G/N' Ward
50) A.C. 'H/E' Ward
51) A.C. 'H/W' Ward
52) A.C. 'K/E' Ward
53) A.C. 'K/W' Ward
54) A.C. 'L' Ward
55) A.C. 'M/E' Ward
56) A.C. 'M/W' Ward
57) A.C. 'N' Ward
58) A.C. 'P/S' Ward
59) A.C. 'P/N' Ward
60) A.C. 'R/S' Ward
61) A.C. 'R/N' Ward
62) A.C. 'R/C' Ward
63) A.C. 'S' Ward
64) A.C. 'T' Ward
65) A.C. (Estate)
66) A.C. (Markets)
67) A.C.(R.E.)City
68) A.C.(R.E.)W.S
69) A.C.(R.E.)E.S
70) Dy.Ch.Engr.(B.P.) City/E.S./W.S.
71) S.E.(B.P.)City/E.S./W.S.
72) A.E.(B.P.)City/E.S./W.S.
73) A.E.(B.F.)_____All Wards.
74) A.E.(Mark.)_____All Wards.
75) P.S. to M.E.
76) P.S. to A.D.C.(City)
77) P.S. to A.D.C.(W.S.)
78) P.S. to A.D.C.(E.S.)
79) P.S. to A.D.C.(Hqrs.)

Forwarded herewith _____ a/o (total) subject for information and necessary action.

A.C. to DMC (R.E.)

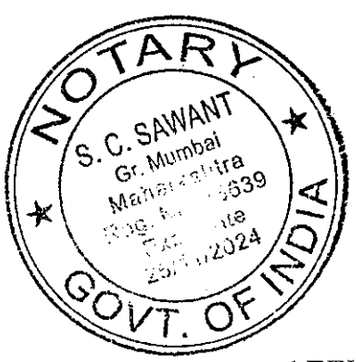
IN THE HIGH COURT OF JUDICATURE
AT BOMBAY

ORDINARY ORIGINAL CIVIL
JURISDICTION
WRIT PETITION (L) NO. 3011 OF 2020

Kangana Ranaut ...Petitioner

V/s.

M.C.G.M . & ors. ...Respondents



AFFIDAVIT IN REPLY ON BEHALF OF
RESPONDENT TO THE WRIT PETITION.

Dated this 10th day of September, 2020

Aruna Savla and ors.
Advocate for Respondent Nos. 1, 2
2nd Floor, Annex Bldg.,
Municipal Corporation
Of Greater Mumbai,
Mahapalika Marg, Mumbai 400 001.