

SYNOPSIS AND LIST OF DATES

That the Petitioners herein are filing present Special Leave Petition against the final judgment and order dated 13.01.2021 passed by the Hon'ble High Court of Judicature at Bombay in Appeal From Order [Stamp] No.270 OF 2021 whereby the Hon'ble High Court without considering the provisions of Section 43 (1) of the Maharashtra Regional and Town Planning Act, 1966 and the same has been approved by the Municipal Commissioner subject to Maharashtra Coastal Zone Management Authority (MCZMA) permission only which has been submitted by the petitioners in the year 2018 before the concerned department for conversion of use of the Residential Premises into a Residential Hotel dismissed the Petition and affirmed the order dated 19.12.2020 passed by the City Civil Court, Borivali Division at Dindoshi, Goregaon, Mumbai which confirmed the demolition notice dated 24.10.2020.

The grievance of the petitioners before this Hon'ble Court is their application for conversion which has been

approved by the Municipal Commissioner subject to Maharashtra Coastal Zone Management Authority (MCZMA) permission submitted in the year 2018 may kindly be directed to be decided by the respondents; the petitioners have already stopped the work of internal renovation which require no permission as per the provisions of Section 43 of Maharashtra Regional and Town Planning Act, 1966, therefore, the respondents may kindly be restrained from demolition of the renovation work already done in the suit building as if the application of the applicants is approved, the financial loss due to demolition will not be recovered in any manner and would cause miscarriage of justice to the Petitioners.

That the Petitioners of the present petition are renowned persons as Petitioner No.1 Sonu Sood a Bollywood actor and Petitioner No.2 is his wife. Petitioner No.1 each day since the COVID-19 lockdown in Mumbai, has been organizing buses for migrant workers to travel from Mumbai to their respective home-towns. As part of his 'Ghar Bhejo' campaign, he has helped approximately 12,000 migrants reach home, and arrangements have been made for another 45,000. He

responds to questions over a voice note, amid what he calls a 'crazily busy schedule' that keeps him awake nearly 22 hours a day. Each day, at least around 45,000 people are provided food and water as well.

That Petitioners are the owners and occupiers of building known as 'Shakti Sagar Building' comprising Basement, Ground + 1st to 6th floors. (Hereinafter referred as 'suit building').

It is submitted that Petitioners have occupied various units in the suit building from different owners by way of registered agreement executed before the Sub Registrar of Assurances and after acquiring the said premises the petitioners got electricity meters transferred in their names to show the valid and authorized use of the building by them. They are also regularly paying necessary Assessment Charges for usage of the said building. The Building in question is an authorized building and has been constructed as per the approved plans and necessary assessment taxes are being collected by the Corporation for the usage of the same.

That as per various Registered Sale Agreements The petitioner No.1 and Petitioner No.2 are owner of the Shop No.4 and 5 on ground floor and all user units on 1st to 6th upper floors, for which the proposal was submitted. The Occupation Certificate was granted on 23.01.1992 as per DCR, 1967, since plot is situated in CRZ-II for the existing building comprising of Basement (Floor for Storage) + Ground Floor for shops + 1st to 5th +6th for residential user.

The Learned Municipal Commissioner approved the proposal on 07/02/2020 and besides approving other concession points, allowed change of user from Residential to Residential Hotel/Lodging (Guest House Rooms), as per provisions of DCR 1967 and as proposed by Ch.E. (D.P.)

It is respectfully submitted that all the correspondences made by the M.C.G.M. Department regarding the suit building with the Petitioners as they are owners/occupiers of the Property, therefore, there is no need to produce any document for the petitioners to establish their ownership as they had already filed agreements with their Reply dated 23.11.2020 to the Notice dated 24.10.2020 with the Respondent Corporation.

That, the petitioners are in occupation of various units in the suit building, as per various Registered Sale Agreements.

It is respectfully submitted that after acquiring the Building the Petitioners were desirous of starting residential hotel from 1st to 6th upper floors of the suit building and in that regard they have applied by an put up application for the same somewhere in the year 2018 and the same is approved by the office of the Respondents more particularly being Building Proposal Department.

It is further respectfully submitted that the Petitioners are desirous of converting the said building into a Residential Hotel, the Petitioners were carrying out interior work for which no permission is required under Section 43 of Maharashtra Regional and Town Planning Act, 1966. For kind perusal of this Hon'ble Court Section 43 is being reproduced as under:

“Section 43: After the date on which declaration of intention to prepare a Development plan for any area is published in the Official Gazette I [or after the date on which a notification specifying any undeveloped area as a notified area, or any area designated as site for a new town, is published in the Official Gazette], no person

shall institute or change the use of any land or carry out any development of land without the permission in writing of the Planning Authority:

Provided that, no such permission shall be necessary:

(i) for carrying out works for the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building or which do not materially affect the external appearance thereof, I [except in case of heritage building or heritage precinct

(ii) the carrying out of works in Compliance with any order or direction made by any authority under any law for the time being in force;

(iii) the carrying out of works by any authority in exercise of its powers under any law for the time being in force;.....”

That the Petitioners vide Letter dated 04.09.2018 had informed the Assistant Engineer (B&F) K/W, M.C.G.M. (K/West Ward) Andheri (West), Mumbai with regard to their proposal application dated 19.06.2018 and they also informed

that they obtained requisite 'No Objection Certificate' from Chief Fire Officer, Mumbai Fire Brigade Department on 13.07.2018 and the copy of the same was uploaded on the website of MCGM, therefore they were carrying out interior works, which requires no permission under Section 342 and 347 of MMC Act and also under Section 43 of MRTP Act, but for the sake of abundant caution they have put up necessary application for the same on 19.06.2018.

That on 1.9.2018 Inspection officer visited on site i.e. suit building and observed that owner/occupier i.e. petitioners carrying out additions and alterations by using sisporex block partition walls from first floor up to sixth floor and removing of BM walls of the suit building, at that time Inspection Officer asked for sanctioned plan or requisite permission of the competent authority, then the Petitioners told him about their pendency of application from the year 2018 and also apprized him that it is not necessary for them to take permission in accordance with the provisions provided under Section 43 of M.R.T.P. Act, 1966.

It is important to mention here that the respondents had demolished the offending structure on 12th November, 2018 for

the first time which caused a huge financial loss to the Petitioners despite their application submitted in the year 2018 was approved in 2020 by the concerned department.

That the designated officer along with his report sent a letter dated 1.09.2018 to the Senior Police Officer, Juhu Police Station, Mumbai and directed him to initiate proceedings under M.P.D.A and other Act.

It is important to mention here that the respondents in compliance of the Notice dated 01.09.2018 had demolished the offending structure on 12th November, 2018 for the first time which caused a huge financial loss to the Petitioners despite the fact that their application submitted in the year 2018 was pending before the concerned department.

It is important to mention here that one Mr. Ganesh Shankar Kusmulu who introduced himself as a representative of a NGO and an RTI Activist demanded huge amount from the Petitioners failing which through his sources in the office of the Respondents Corporation he lodged a complaint before Lokayukta and ensure the necessary action would be taken against the Petitioners and through his good sources was

successful in being managed hearing against the Petitioners in the year 2019.

That the Lokayukta on the basis of complaint, hearing took place before Hon'ble Lokayukta and order has been passed on 23.1.2020 whereby the Lokayukta directed the Assistant Commissioner to file its Report.

That Asstt. Engineer submitted in his Report that one of the Licensed Architect Kalpesh Jain has submitted proposal for regularisation of work and the said proposal submitted Online on 19.6.2018 and the same is pending before the Building Proposal Department on behalf of the Petitioners.

In this way on the basis of complaint of Ganesh Kusmulu an order dated 4.2.2020 was passed directing to remove the said unauthorized work at the suit building within seven days from the receipt of the order otherwise the work will be demolished by the concerned department.

That a Notice under section 53(1) of the Maharashtra Regional and Town Planning Act, 1996 was issued to Petitioners to apply under Section 44 of M.R.T.P. Act for retention of the work before the Competent Authority i.e. Executive Engineer (Building Proposal) City of M.C.G.M.,

within one from the date of receipt of the notice. 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.

There is no speaking order nor there is any mention of earlier demolitions, however, the Petitioners have already applied for regularisation under section 44 of the M.R.T.P Act, which is statutory remedy available to petitioner Under section 53 (3) of the M.R.T.P Act. The notice dated 24.10.2020 being independent does not refer to earlier demolition and, therefore, it cannot be said that the petitioners have suppressed those facts from the Court. Petitioners Application Under Section 44 has been Approved by the Respondent subject to the NOC of MCZMA permission, as such the statutory remedy is availed and approved in the instant case which has not been taken into consideration by the Trial court and High Court.

That the Petitioners gave an appropriate and detailed reply to the said Notice on 23.11.2020 alongwith all relevant

Annexures annexed to it reiterating therein that under section 43 of M.R.T.P. Act Petitioners are not required to obtain any permission for carrying out any changes to the internal portion of the building. It has also been revealed in the Notice that the petitioner had already preferred an application for change of use and for carrying out internal changes to the premises and the said application is Approved subject to the NOC of MCZMA permission,

That on the basis of ill-advice in a hurriedly manner the petitioners as they have apprehension of demolition of internal structure of the suit building filed L.C. Suit No. 1368 of 2020 before Bombay City Civil Court at Bombay, Borivili Division, Dindoshi under Sections 34, 37, to 39 of Specific Relief Act praying therein to declare the Notice dated 24.10.2020 issued by Respondent no.2 as illegal, bad in law, capricious, arbitrary, jurisdictional error, nullity and malafide. The petitioners also filed Notice of Motion No.1590 of 2020 alongwith the aforesaid L.C. Suit No.1368 of 2020 seeking temporary injunction against the Respondents.

That the Learned Bombay City Civil Court at Bombay, Borivili Division, Dindoshi vide its order dated 19.12.2020 dismissed the Notice of Motion No.1590/2020.

Being Aggrieved the petitioners filed Appeal from order (Stamp) No. 270 of 2021 before the Hon'ble High Court of Judicature at Bombay alongwith Interim Application (ST.) no. 271 of 2021.

That the Hon'ble High Court vide impugned order dated 13.01.2021 dismissed the petition filed by the Petitioners.

It is important to mention here that the respondents had demolished the offending structure on 12th November, 2018 for the first time which caused a huge financial loss to the Petitioners still they are waiting their application submitted in the year 2018 to be decided by the concerned department.

Hence the present Special Leave Petition.

LIST OF DATES

That Petitioners are the owners and occupiers of building known as 'Shakti Sagar Building' comprising Basement, Ground + 1st to 6th floors. (Hereinafter referred as 'suit building').

24.05.2018

It is submitted that Petitioners have occupied various units in the suit building from different owners by way of registered agreement executed before the Sub Registrar of Assurances and after acquiring the said premises the petitioners got electricity meters transferred in their names to show the valid and authorized use of the building by them. They are also regularly paying necessary Assessment Charges for usage of the said building. The Building in question is an authorized building and has been constructed as per the approved plans and necessary assessment taxes are being collected by the Corporation for the usage of the same. A copy of one of the Agreement dated 24.05.2018 is annexed as **Annexure P-1.**

That as per various Registered Sale Agreements The petitioner No.1 and Petitioner No.2 are owner of the Shop No.4 and 5 on ground floor and all user units on 1st to 6th upper floors, for which the proposal was submitted.

19.06.2018 After purchasing the units of building the Petitioners submitted the proposal for change of user from residential to residential hotels or lodging house and shop to restaurant at ground floor in existing building known as "Shiv Sagar" through their Architect Shri Kalpesh Jain of KN Arquitectura U/No. CHE/WS/4278/K/W/342.

It is further respectfully submitted that the Petitioners are desirous of converting the said building into a Residential Hotel, the Petitioners were carrying out interior work for which no permission is required under

Section 43 of Maharashtra Regional and Town Planning Act, 1966.

04.09.2018 That the Petitioners vide Letter dated 04.09.2018 had informed the Assistant Engineer (B&F) K/W, M.C.G.M. (K/West Ward) Andheri (West), Mumbai with regard to their proposal application dated 19.06.2018 and they also informed that they obtained requisite 'No Objection Certificate' from Chief Fire Officer, Mumbai Fire Brigade Department on 13.07.2018 and the copy of the same was uploaded on the website of MCGM, therefore they were carrying out interior works, which requires no permission under Section 342 and 347 of MMC Act and also under Section 43 of MRTP Act, but for the sake of abundant caution they have put up necessary application for the same on 19.06.2018. A copy of the Letter dated 04.09.2018 of the Petitioners to the

Assistant Engineer (B&F) K/W dated 04.08.2018 is annexed as **Annexure P-2**.

01.09.2018 That on 1.9.2018 Inspection officer visited on site i.e. suit building and observed that owner/occupier i.e. petitioners carrying out additions and alterations by using sisporex block partition walls from first floor up to sixth floor and removing of BM walls of the suit building, at that time Inspection Officer asked for sanctioned plan or requisite permission of the competent authority, then the Petitioners told him about their pendency of application from the year 2018 and also apprized him that it is not necessary for them to take permission in accordance with the provisions provided under Section 43 of M.R.T.P. Act, 1966 but despite showing the relevant correspondence the Designated Officer vide Notice dated 01.09.2018 directed the Petitioners to stop the erection of the said building. A copy of the Notice

dated 01.09.2018 is annexed as **Annexure P-3.**

01.09.2018 That the designated officer alongwith his report sent a letter dated 1.09.2018 to the Senior Police Officer, Juhu Police Station, Mumbai and directed him to initiate proceedings under M.P.D.A and other Act. A copy of the Letter dated 01.09.2018 is annexed as **Annexure P-4.**

It is important to mention here that the respondents in compliance of the Notice dated 01.09.2018 had demolished the offending structure on 12th November, 2018 for the first time which caused a huge financial loss to the Petitioners still they are waiting their application submitted in the year 2018 to be decided by the concerned department.

Here it is important to mention that one Mr. Ganesh Shankar Kusmulu who introduced himself as a representative of a NGO and an

RTI Activist demanded huge amount from the Petitioners failing which through his sources in the office of the Respondents Corporation he lodged a complaint before Lokayukta and ensure the necessary action would be taken against the Petitioners and through his good sources was successful in being managed hearing against the Petitioners in the year 2019.

19.11.2018 That in continuation of the application dated 19.06.2018 the Licensed Architect vide Letter dated 19.11.2018 sent an application on behalf of Owner revealing therein that necessary application i.e. CFO NOC, No action pending cft, Structural stability cft, fresh D.P. remarks have already been submitted with the concerned department. A copy of the Letter dated 19.11.2018 is annexed as **Annexure P-5**.

23.01.2020 That the Lokayukta on the basis of complaint, hearing took place before

Hon'ble Lokayukta and order has been passed on 23.1.2020 whereby the Lokayukta directed the Assistant Commissioner to file its Report. A copy of the order dated 23.01.2020 passed by the Lokayukta is annexed as **Annexure P-6**.

That Asstt. Engineer submitted in his Report that one of the occupier Kalpesh Jain has submitted proposal for regularisation of work and the said proposal submitted Online on 19.6.2018 and the same is pending before the Building Proposal Department.

04.02.2020 In this way on the basis of complaint of Ganesh Kusmulu an order dated 4.2.2020 was passed directing to remove the said unauthorized work at the suit building within seven days from the receipt of the order otherwise the work will be demolished by the concerned department. A copy of the Order dated 04.02.2020 is annexed as **Annexure P-7**.

07.02.2020 The Learned Municipal Commissioner approved the proposal on 07/02/2020 and besides approving other concession points, allowed change of user from Residential to Residential Hotel/Lodging (Guest House Rooms), as per provisions of DCR 1967 and as proposed by Ch.E. (D.P.). The said application has been approved by the Municipal Commissioner subject to Maharashtra Coastal Zone Management Authority (MCZMA) permission only. A copy of the Approval of Municipal Corporation of Greater Mumbai dated 07.02.2020 is annexed as **Annexure P-8**.

24.10.2020 That a Notice under section 53(1) of the Maharashtra Regional and Town Planning Act, 1996 was issued to Petitioners to apply under Section 44 of M.R.T.P. Act for retention of the work before the Competent Authority i.e. Executive Engineer (Building Proposal) City of M.C.G.M., within one

month from the date of receipt of the notice. 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. A copy of the Notice dated 24.10.2020 is annexed as **Annexure P-9.**

There is no speaking order nor there is any mention of earlier demolitions, however, the Petitioners have already applied for regularisation under section 44 of the M.R.T.P Act and it has been approved subject to NOC of MCZMA permission. The notice dated 24.10.2020 being independent does not refer to earlier demolition and, therefore, it cannot be said that the

petitioners have suppressed those facts from the Court.

23.11.2020 That the Petitioners gave an appropriate and detailed reply to the said Notice on 23.11.2020 reiterating therein that under section 43 of M.R.T.P. Act Petitioners are not required to obtain any permission for carrying out any changes to the internal portion of the building. It has also been revealed in the Notice that the petitioner had already preferred an application for change of use and for carrying out internal changes to the premises and the said application is Approved, A copy of the Reply dated 23.11.2020 through counsel for the petitioners to the Notice dated 24.10.2020 is annexed as **Annexure P-10**.

23.11.2020 That on the basis of ill-advice in a hurriedly manner the petitioners as they have

apprehension of demolition of internal structure of the suit building filed L.C. Suit No. 1368 of 2020 before Bombay City Civil Court at Bombay, Borivili Division, Dindoshi under Sections 34, 37, to 39 of Specific Relief Act praying therein to declare the Notice dated 24.10.2020 issued by Respondent no.2 as illegal, bad in law, capricious, arbitrary, jurisdictional error, nullity and malafide. The petitioners also filed Notice of Motion No.1590 of 2020 alongwith the aforesaid L.C. Suit No.1368 of 2020 seeking temporary injunction against the Respondents. A copy of the L.C. Suit No. 1368 of 2020 before Bombay City Civil Court at Bombay, Borivili Division, Dindoshi dated 23.11.2020 is annexed as **Annexure P-11**.

19.12.2020

That the Learned Bombay City Civil Court at Bombay, Borivili Division, Dindoshi vide its order dated 19.12.2020 dismissed the

Notice of Motion No.1590/2020. It is submitted that the main L.C. No.1368 of 2020 is still pending before the Court below. A copy of the order dated 19.12.2020 passed in L.C. Suit No. 1368 of 2020 by the Bombay City Civil Court at Bombay, Borivili Division, Dindoshi is annexed as **Annexure P-12.**

04.01.2021 Being Aggrieved the petitioners filed Appeal from order (Stamp) No. 270 of 2021 before the Hon'ble High Court of Judicature at Bombay alongwith Interim Application (ST.) no. 271 of 2021. A copy of the Appeal from order (Stamp) No. 270 of 2021 filed before the Hon'ble High Court of Judicature at Bombay dated 04.01.2021 is annexed as **Annexure P-13.**

13.01.2021 That the Hon'ble High Court vide impugned order dated 13.01.2021 dismissed the petition filed by the Petitioners.

25.01.2021 Hence the present Special Leave Petition.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
[SCR ORDER XXI RULE 2 (1)]
(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)
SPECIAL LEAVE PETITION (C) NO. OF 2020
WITH PRAYER FOR INTERIM RELIEF

IN THE MATTER OF:

BETWEEN:

POSITION OF PARTIES

In the	High	In this Hon'ble
Court		Court

1. SonuSood

Petitioner No.1

Petitioner No.1

2. SonaliSonuSood

Petitioner No.2

Petitioner No.2

Both R/o Shakti Sagar Building

C. T. S. Nos. 360 & 360/1 to 4

Village Juhu, A. B. Nair Road,

Juhu, Mumbai- 400049

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.

Respondent No.1

Contesting
Respondent No.1

2. Designated Officer- IV

Asst. Engineer (B&F)

K/West Ward, 6thFloor, Paliram,

Path Off. BEST Bus Depot Road,

Opp. Andheri (W), Mumbai- 400058

Respondent No.2

Contesting
Respondent No.2

TO

THE HON'BLE CHIEF JUSTICE OF
INDIA AND HIS COMPANION JUSTICES
OF THE HON'BLE SUPREME COURT OF INDIA.

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED.

MOST RESPECTFULLY SHOWETH:-

1. That the Petitioners herein are filing present Special Leave Petition against the final judgment and order dated 13.01.2021 passed by the Hon'ble High Court of

Judicature at Bombay in Appeal From Order [Stamp] No.270 OF 2021 whereby the Hon'ble High Court without considering the provisions of Section 43 (1), 44 & 53 (3) of the Maharashtra Regional and Town Planning Act, 1966 and also without considering the Approval of the application which has been filed by the petitioners in the year 2018 before the concerned department for conversion of use of the Residential Premises into a Residential Hotel dismissed the Petition and affirmed the order dated 19.12.2020 passed by the City Civil Court, Borivali Division at Dindoshi, Goregaon, Mumbai which confirmed the demolition notice dated 24.10.2020.

2. QUESTION OF LAW:

The following substantial questions of law arise for consideration by this Hon'ble Court.

- i) Whether the petitioners are not entitled to get injunction order with respect demolition of the structure in the suit building as their application dated 19.06.2018 has been approved by the Municipal Commissioner subject to Maharashtra Coastal Zone Management Authority (MCZMA) permission?

- ii) Whether the fact should have not been considered that the petitioners were proceeded with the renovation work of the suit building in view of the provisions of Section 43 of the M.R.T.P. Act, Maharashtra Regional and Town Planning Act, 1966?
- iii) Whether the Hon'ble High Court should have not been considered the vital fact that the petitioners' application for conversion has been approved by the Municipal Commissioner subject to Maharashtra Coastal Zone Management Authority (MCZMA) permission?
- iv) Whether the Hon'ble High Court at the time of passing the impugned order not failed to consider that the petitioners have already stopped the work of internal renovation which required no permission as per the provisions of Section 43 of Maharashtra Regional and Town Planning Act, 1966?
- v) Whether the respondents should have not been restrained from demolition of the renovation work already done in the suit building? As if the application of the applicants is approved, the financial loss due to demolition will not be recovered in any manner and would cause miscarriage of justice to the Petitioners?
- vi) Whether this fact can be ignored in the facts and circumstances that the Notice dated 24.10.2020 has no mention that respondents had demolished the offending structure on 12th November, 2018 for the first time which caused a huge financial loss to the Petitioners?

- vii) Whether it is justified for the Hon'ble High Court not to grant stay of demolition when the application for the petitioners has been approved by the Municipal Commissioner subject to Maharashtra Coastal Zone Management Authority (MCZMA) permission?
- viii) Whether the Hon'ble High Court ought not to have considered that the said notice has been issued at the behest of the Complainant who is helbent on causing harm to the property of the Petitioners as his illegal demands are not satisfied?

3. DECLARATION IN TERMS OF RULE 3 (2):

The petitioners state that no other such or similar petition seeking leave to appeal has been filed by them against the final judgment and order dated 13.01.2021 passed by the Hon'ble High Court of Judicature at Bombay in Appeal From Order [Stamp] No.270 OF 2021.

4. DECLARATION IN TERMS OF RULE 5:

The Annexures P-1 to P-11 produced along with the present Special Leave Petition are true copies of their originals and were a part of the records of the case in the High Court below, against whose order the leave to appeal is sought for in the present Special Leave Petition.

5. GROUND:

The Special Leave to appeal is sought on the following grounds:-

- 5.1 Because the petitioners are entitled to get injunction order with respect demolition of the structure in the suit building as their application dated 19.06.2018 has been approved by the Municipal Commissioner subject to Maharashtra Coastal Zone Management Authority (MCZMA) permission.
- 5.2 Because the fact should have been considered that the petitioners were proceeded with the renovation work of the suit building in view of the provisions of Section 43 of the M.R.T.P. Act, Maharashtra Regional and Town Planning Act, 1966.
- 5.3 Because the Hon'ble High Court should have been considered the vital fact that the petitioners' application for conversion has been approved by the Municipal Commissioner subject to Maharashtra Coastal Zone Management Authority (MCZMA) permission.
- 5.4 Because the Hon'ble High Court at the time of passing the impugned order failed to consider that the petitioners have already stopped the work of internal renovation which required no permission as per the provisions of Section 43 of Maharashtra Regional and Town Planning Act, 1966.
- 5.5 Because the respondents should have been restrained from demolition of the renovation work already done in the suit building. As if the application of the applicants is

approved, the financial loss due to demolition will not be recovered in any manner and would cause miscarriage of justice to the Petitioners.

- 5.6 Because this fact cannot be ignored in the facts and circumstances that the Notice dated 24.10.2020 has no mention that respondents had demolished the offending structure on 12th November, 2018 for the first time which caused a huge financial loss to the Petitioners.
- 5.7 Because the Hon'ble High Court fell into a grave error by not granting stay to the demolition when the application for the petitioners has been approved by the Municipal Commissioner subject to Maharashtra Coastal Zone Management Authority (MCZMA) permission.
- 5.8 Because the Hon'ble High Court ought to have considered that there is total non-application of mind on the part of the Respondent Corporation in issuing the notice dated 24.10.2020 as well as Order dated 19.12.2020 passed by the Court below whereby the injunction application has been dismissed.
- 5.9 Because the Hon'ble High Court failed to consider that a Notice under section 53(1) of the Maharashtra Regional and Town Planning Act, 1996 was issued to Petitioners to apply under Section 44 of M.R.T.P. Act for retention of the work before the Competent Authority i.e. Executive Engineer (Building Proposal) City of M.C.G.M., within one from the date of receipt of the

notice. 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. There is no speaking order nor there is any mention of earlier demolitions, however, the Petitioners have already applied for regularisation under section 44 of the M.R.T.P Act, which is statutory remedy available to petitioner Under section 53 (3) of the M.R.T.P Act. The notice dated 24.10.2020 being independent does not refer to earlier demolition and, therefore, it cannot be said that the petitioners have suppressed those facts from the Court. Petitioners Application Under Section 44 has been Approved by the Respondent subject to the NOC of MCZMA permission, as such the statutory remedy is availed and approved in the instant case which has not been taken into consideration by the Trial court and High Court.

5.10 Because the Hon'ble High Court ought to have considered that the said notice has been issued at the behest of the Complainant who is helbent on causing harm to the property of the Petitioners if at all is illegal demands are not satisfied.

5.11 Because the Hon'ble High Court ought to have considered that the said notice has been issued without

perusing the file and other relevant documents in respect of the suit building.

5.12 Because the Hon'ble High Court ought to have considered that the said notice is in total contravention of Section 53(1) of MRTP Act as the said notice has been issued with time frame of "within one month" in complete contravention to the time frame provided under Section 53(1) of MRTP Act "not less than 30 days".

5.13 Because the Hon'ble High Court ought to have considered that the said notice is vague and cannot identify the alleged unauthorized construction as the notice does not state the dimension of the alleged unauthorized construction if any and also does not state about the material used in the construction.

5.14 Because the Hon'ble High Court ought to have considered that the said notice is also not supported by any photograph to show the exact nature of the alleged unauthorized construction.

6. GROUND FOR INTERIM RELIEF:

6.1 The petitioners have submitted detail facts and circumstances with grounds while challenging the impugned order in the instant Special Leave Petition. Those averments/ submissions are relied upon for the purpose of interim relief also.

6.2 In view of the facts/circumstances of this case and grounds, the petitioners, humbly submits that he has, prima facie, a good case on merit and is likely to succeed before this Hon'ble Court.

6.3 Interest of justice and balance of convenience are also in the favour of the Petitioners.

7. PRAYER:

In the circumstances, it is, therefore, most humbly and respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a) grant Special Leave to Appeal against the final judgment and order dated 13.01.2021 passed by the Hon'ble High Court of Judicature at Bombay in Appeal From Order [Stamp] No.270 OF 2021; and
- b) pass such other or further order/ orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

8. PRAYER FOR INTERIM RELIEF:

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- a) grant ad-interim ex-parte stay of the operation of the final judgment and order dated 13.01.2021 passed by the Hon'ble High Court of Judicature at Bombay in Appeal From Order [Stamp] No.270 OF 2021; and

- b) grant ad-interim ex-parte stay of the operation of the order dated 19.12.2020 passed in L.C. Suit No. 1368 of 2020 by Bombay City Civil Court at Bombay, Borivili Division, Dindoshi;
- c) Pass any such other or further orders as may be deemed fit and proper in the circumstances of this case.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.

DRAWN BY:

Vineet Dhanda, Advocate

FILED BY

DRAWN ON:

FILED ON:

[DR. J.P. DHANDA]

ADVOCATE FOR THE PETITIONERS

