



Sumedh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 30813 OF 2023**

V Sridharan ...Petitioner
Versus
Brihanmumbai Municipal Corporation & Ors ...Respondents

**Mr Prakash Shah, i/b PDS Legal, for the Petitioner.
Mr Kunal Waghmare, for the Respondent – MCGM.**

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**CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 2nd November 2023**

PC:-

1. Mentioned. Not on board. Taken on board.
2. The Petitioner has filed this Petition under Article 226 of the Constitution of India challenging a notice dated 23rd October 2023 passed by the 3rd Respondent, the Executive Engineer of the Municipal Corporation of Greater Mumbai (“MCGM”) ostensibly under Section 351 of the Mumbai Municipal Corporation Act, 1888 (“MMC Act”) directing the Petitioner, a practising senior Advocate, to restore, remove or demolish the supposedly “unauthorised” merging of a niche area into his office or chamber premises. This is supposed to be done within 15 days, by 15th

November 2023. In default, demolition is threatened by the MCGM. This notice was received on 31st October 2023. The demolition is apprehended by 14th November 2023.

3. We have allowed Mr Shah to mention the matter. There are several grounds taken in the Petition, including that the order was passed without any notice or opportunity of being heard, that it is a non-speaking order, that it does not address the merits of the case and so forth. In addition, it is pointed out that the MCGM has examined and inspected the building at least three times in the past. There is also a regularisation application by the Society of which the Petitioner is a member. This application covers the work in question. It has never been decided.

4. We have allowed production because even otherwise on a daily basis we are confronted with Petition after Petition where large scale illegal constructions are going on in broad daylight and the maximum that seems to happen, as we have noticed in at least one case (*Kamla Industrial Park vs MCGM*¹), other than issuing a stop work notice, no action whatsoever is taken. These are typically cases of several tens of thousands of square feet of illegality. Even in that case, we remarked that for the most minor irregularity, the entire machinery of the MCGM is thrown at it with considerable aggression, but for anything that is on a larger scale, other than a stop work notice, nothing at all happens. Large scale illegalities directly affect the adherence to and implementation of planning law and generally of town planning. The merging of a niche area into an

1 W023 SCC OnLine 2274.

office is hardly comparable in a situation like this. At some point we will have to consider these actions on the basis of the doctrine of proportionality and *Wednesbury* unreasonableness — not merely in the context of a particular notice or case, but overall, about whether the highly selective implementation of notices and invocation of statutory powers can be said to meet the tests of either doctrine. Here, we are not concerned with a building, a structure or many thousand of square feet. We are confronted with a *niche*. It is probably no more than a reasonable closet-sized space. In context: hundreds of thousands of square feet being constructed openly — stop work notice. A tiny niche incorporated into one of Mumbai’s notoriously cramped workspaces — demolish.

5. Hence, Rule. Mr Waghmare waives service of Rule on behalf of the Respondents.

6. As to the question of interim relief, Mr Waghmare seeks time to file an Affidavit-in-Reply. The Reply is to be filed and served by 4th December 2023. A Rejoinder is permitted by 11th December 2023.

7. In the meantime, the impugned notification is stayed. The MCGM will not take further action against the niche in question and will send no further notices in that regard. It may proceed to decide the regularisation application, but if that application is rejected, no further action will be taken in respect of the niche in question until further orders.

8. We will take up the Petition itself on 13th December 2023. Both sides are put to notice that we propose to dispose of the Petition finally on that day.

9. This ad interim order will continue until further orders.

(Kamal Khata, J)

(G. S. Patel, J)