



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

AFFIDAVIT IN SUR REJOINDER ON BEHALF OF THE MUNICIPAL
CORPORATION OF GREATER MUMBAI

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 affidavit in Rejoinder filed by the Petitioner on 21st Sept 2020 and I am making this affidavit on behalf of Respondents 1 & 2 in response to certain allegations made therein :
2. At the outset I submit that :
 - (a) In the amended Petition [filed after the Respondents had filed their limited affidavit dt 10th Sept 2020]

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- i. the Petitioner had NOT disputed that unlawful additions and alterations as detailed in the Notice and in the Affidavit dt 10th Sept 2020, had been carried out in the Premises, contrary to the sanctioned building plan . The Petitioner had not denied the same in her Advocates Reply to the sec 354A Notice , or in the original Petition. In fact in Ground (K) of the amended Petition the Petitioner has stated “ *that the structures that the Respondents have purportedly noted in the impugned Notice as unauthorised or illegal are merely operational use of the area of the said bungalow and cannot be said to be unauthorised or illegal in any manner* ” and had further alleged that the Petitioner was entitled to apply for regularisation of the same.
- ii. The Petitioner had not disputed the statement made in the Respondents Affidavit dt 10th Sept 2020 that “ *at the time of inspection , workmen, materials and tools were also present and work was found to be going on in the property*”. The Amended Petition had only stated at Para 7E(h) , Ground G(x) and Ground J(vi) that “ *the First Inspection Report, : does not even mention names of any of the workman purported to have been carrying on the alleged work , nor does it mention the presence of any material or tools found at the said bungalow which were used to carry out the alleged work*”



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(b) However in the Rejoinder Affidavit it has now been alleged /
stated that :

i. “ I specifically deny that I have carried out unlawful additions and alterations as alleged or at all” [Para 8(e) & (f) Pg 121]

“ I specifically deny that the record established that the petitioner has unlawfully made substantial alterations and additions to the property , contrary to the sanctioned building plan” [Para 8(c) Pg 120]

“I deny that the sanctioned Plans establishes that illegal work was carried out.” [Para (c) Pg 120.]

ii. “I deny that at the time of inspection six workmen along with materials and tools were also found to be present and work of renovation and finishing was found to be going on in the entire property including the unlawful additions & alterations” [Para 8 (h) Pg 122 also Para 7 Pg 119]

iii. The Affidavit in Rejoinder also alleges for the first time that the Respondents had “ Shown scant regard for the statutory provisions , the guidelines issued by Respondent No 1 itself as also the directions of this Honble Court ” which “ requires photos of the alleged violation digitally displaying the time & date” . [Ref : Para 6 Pg 119]

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(c) I submit that the said denials and allegations are both belated and false. I however respectfully say and submit that in view of the denials/ dispute belatedly sought to be raised by the Petitioner on both these aspects, this Writ Petition should not be entertained and the Petitioner should be relegated to filing a Suit impugning the Notice under sec 354A and the order/ action for demolition taken pursuant thereto, where these questions of fact can be duly established / decided after evidence is led. It is well settled that an injunction can be issued only if the Court comes to a clear finding that work was being carried out lawfully/ legally – i.e. consistently with the approved building plan and with the approval of the competent authority. It is respectfully submitted that neither the original Petition nor the Amended Petition makes out any case as to why the Petition should be entertained and such an inquiry should be undertaken by this Hon'ble Court under Article 226 of the Constitution of India, and why the Petitioner should not be required to file a civil suit. I submit that the Respondents had not earlier objected to the matter being raised in a WP under Art 226 as the Petitioner had in the Reply to sec 354A, the original Petition and the Amended Petition not denied/ disputed that alterations and additions had been carried out contrary to the approved building plan and that workmen, materials and implements were found present and work was found to be going on in the property. The objection to hearing & deciding the matter under Art 226 has arisen in view the Petitioner having belatedly made the aforesaid false denials and having raised false disputes on facts in her said rejoinder affidavit.



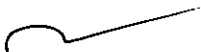
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3. Without prejudice to the aforesaid and only if this Hon'ble Court [despite these Respondents aforesaid submission] decides to consider and decide such factual issues in the present proceedings under Article 226, I say and submit as follows :

(A) I am annexing as **Exhibits A1, A2 & A3** hereto, copies of the sanctioned Building Plan, marking thereon the unlawful additions and alterations carried out and which have been listed in the schedule (description of work) at Sr Nos (a) to (n) in the Notice issued u/s 354A. Hereto annexed and marked as **EXHIBITS A1 A2 and A3** are copies of the sanctioned plans superimposed with the sketch of the unlawful additions and alterations.

(B) I am annexing photographs taken on the 7th of Sept [during the inspection] which show the unlawful additions and alterations which have been listed in the schedule (description of work) at Sr Nos (a) to (n) in the Notice issued u/s 354A. The said Photographs bear digital date stamps on them. Pursuant to the directions of this Hon'ble Court, these photographs [alongwith photos taken on the 5th & later on the 9th] have already been furnished to the Hon'ble Court on the 22nd and copies had also been furnished to the Petitioners Advocates. Hereto annexed and marked as **Exhibit B** are copies of the photographs.

(C) I am also highlighting in the said photos the photos which record/show the presence of the Petitioner's five workmen alongwith materials/ implements and that work was found to be going on in

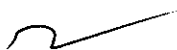


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the entire property. Hereto annexed and marked as **Exhibit C** is a copy of the photographs showing the Workmen.

(D) I say that the aforesaid establishes (i) that the petitioner had unlawfully carried out the alterations and additions [listed in the Schedule of the Notice under sec 354A at (a) to(n)] and (ii) that on 7th Sept at the time of inspection as many as six workmen were found present alongwith materials [such as plywood] and their tools / implements and that work of renovation & finishing was going on virtually throughout the premises.

4. In the Rejoinder Affidavit the Petitioner has also alleged bias and malice by stating that in the case of Mr Manish Malhotra [and the nearby premises] the Respondents had not issued Notice u/s 354A but had issued Notice u/s u/s 351 and given Mr Malhotra 7 days time to reply/ respond. [Ref Para 8(c) Pg 120]. I say that the allegations of malice and bias are false and unwarranted. In the case of Mr Malhotra's premises notice was issued under sec 351 and not under sec 354A as it was found that although there were additions & alterations , there were no workmen and there was no work going on in the premises.
5. Both in the amended Petition and in the Rejoinder the Petitioner has alleged that there was no detection of work in her premises on the 5th and has referred to the fact that the First Inspection Report mentions



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"Time and date of detection : 07.09.2020 15:27:06.". I say that the controversy sought to be created is misplaced. On the 5th the 1st Respondents said Mukadam had in the course of his rounds / while serving notices to other parties noticed the presence of workmen and work going on in the said property and bags filled with construction waste. He had also taken a few photos of the work/ workmen. He had thereafter on the 5/9/2020 itself made a note about these facts. The said Report recorded ongoing work and bags filled with construction waste, but contained no details / particulars of the ongoing work. Based on the said Report an inspection took place on the 7/9/2020 in the course of which it was found that unlawful additions and alterations had been carried out contrary to the sanctioned Building Plans and that six work men were present alongwith materials and sacks containing plywood & debris and that work of renovation & finishing was going on virtually in the entire premises. This Report was uploaded on the 7/9/2020 as the First Inspection Report.

6. I say that the Petition and the Rejoinder makes bald , vague and baseless allegations of malifide intent , ulterior motives, conspiracy and intention to harass on the part of the Respondents . As I have stated earlier these allegations have been made as a counterblast and to obfuscate the fact that the Petitioner was unlawfully carrying on work which entailed substantial additions and alterations to the premises , contrary to the approved building Plan. I further say and submit that it is well settled that when malice/ malafides is alleged against a statutory body such as the 1st Respondents , it could not be as case of malice in fact but could only be malice in law ie legal malafides. I say and submit that in as much as the record establishes

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that the petitioner was carrying on extensive work in her premises [with six workmen , materials etc] and had made substantial alterations and additions contrary to the approved building plan, action u/s 354A was fully justified and the allegations of malafides in law are unwarranted and false.

7. I accordingly say and submit that the Petition should be dismissed with costs.

Advocate^{for} for Respondent MCGM.

Deponent

Drafted by Joel Carlos, Advocate

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

