

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**WRIT PETITION (ST.) NO. 3011 OF 2020**

**Ms. Kangana Ranaut,** )  
 An Adult, Indian Inhabitant, )  
 having her address as Bungalow No. 5, )  
 Chetak Row House No. 41, )  
 Nargis Dutt Road, Pali Hill, )  
 Bandra, West, Mumbai – 400 050 ) ... **Petitioner**

**Versus**

**1.Municipal Corporation of Greater** )  
**Mumbai,** )  
 a local statutory body having its office at )  
 Mahapalika Building, Mahapalika Marg, )  
 Mumbai – 400 001 )  
**2.The Executive Engineer ( B & F ),** )  
 having his office at H/West Ward, H/W Ward )  
 Office Building, Saint Martin Road, Behind )  
 Bandra Police Station, Bandra, West, )  
 Mumbai – 400 050 )  
**3.Government of Maharashtra,** )  
 Through its Secretary, )  
 Ministry of Home Affairs, Mantralaya, )  
 Mumbai – 400 032 )  
**4.Bhagyavant Late,** )  
 An adult, Indian Inhabitant, )  
 Having office at H/West Ward, )  
 H/W Ward Office Building, )  
 Saint Martin Road, Behind Bandra Police )

Station, Bandra, West, Mumbai – 400 050 )  
**5.Sanjay Raut,** )  
 An adult, Indian Inhabitant, )  
 “Maitri” Friends Colony, Bhandup, East, )  
 Mumbai – 400 042 ) ... **Respondents**

Dr.Birendra Saraf, Sr. Adv. a/w. Mr.Prasanna Bhangale, Ms. Monisha Mane Bhangale,  
 Mr.Rizwan Siddiquee i/b. Siddiquee and Associates for the Petitioner.

Mr.Aspi Chinoy, Sr. Adv. a/w. Mr.Joel Carlos, Ms.Rupali Adhate for Respondent Nos.  
 1 and 2.

Ms.P.H.Kantharia, Government Pleader a/w. Ms.Jyoti Chavan, AGP for Respondent  
 No.3.

Mr. Anil Y. Sakhare, Sr. Adv. a/w. Ms.Rupali Adhate, Mr.Rohan Mirpurey i/b. Ms.  
 Aruna Savla for Respondent No. 4.

Mr.Pradeep J. Thorat a/w. Ms.Aditi S. Naikare, Mr. Aniesh S. Jadhav for Respondent  
 No.5.

**CORAM : S.J.KATHAWALLA, &  
 R.I. CHAGLA, JJ.**

**RESERVED ON : 5TH OCTOBER, 2020**

**PRONOUNCED ON : 27TH NOVEMBER, 2020**

**(THROUGH VIDEO CONFERENCING)**

**JUDGMENT (PER S.J. KATHAWALLA, J.) :**

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## 1. Description of the Parties.

The above Writ Petition is filed by the Petitioner – Ms. Kangana Ranaut against Respondent No. 1 – Municipal Corporation of Greater Mumbai ('MCGM'), Respondent No. 2 – Executive Engineer ( B & F ), Respondent No. 3 – Government of Maharashtra, through its Secretary, Respondent No. 4 – Shri Bhagyavant Late, Designated Officer of MCGM and Respondent No. 5 – Shri Sanjay Raut, Member of the Rajya Sabha. Respondent No. 5 is the Chief Spokesperson of Shiv Sena, a political

party which is a part of the Government of Maharashtra, and which Party is also the ruling party in MCGM. Respondent No. 5 is also the Executive Editor of Marathi Daily Newspaper 'Saamna'.

## 2. Challenge in the Writ Petition.

By the above Writ Petition the Petitioner has impugned the notice dated 7<sup>th</sup> September, 2020 issued to the Petitioner by the Respondent No. 4 – Designated Officer of MCGM (**Impugned Notice**) and the speaking Order of demolition dated 9<sup>th</sup> September, 2020, (**Impugned Order**) by the same officer, and has interalia prayed for the following reliefs :

- i. Quashing and setting aside the impugned Notice dated 7<sup>th</sup> September, 2020 issued by Respondent No. 4 to the Petitioner, under Section 354A of the Mumbai Municipal Corporation Act, 1888 ('**the Act**').
- ii. Quashing and setting aside the impugned speaking Order of demolition dated 9<sup>th</sup> September, 2020 passed by Respondent No. 4.
- iii. Declaring the demolition done on 9<sup>th</sup> September, 2020, as illegal and contrary to law.
- iv. Directing the Respondents and the concerned officers of the Respondent No. 1 to compensate the Petitioner to the tune of Rs.2,00,00,000/- (Rupees Two Crores only) towards damages suffered due to the illegal demolition.
- v. Restraining the MCGM and its officers from taking further steps without following due process of law and without giving adequate notice, to enable the

Petitioner to invoke her statutory / judicial remedies.

**3. Some relevant facts, required to be setout at the outset.**

3.1. The Advocate for the Petitioner first moved this Court at around 11.30 a.m. on 9<sup>th</sup> September, 2020, and sought circulation of the Writ Petition at the earliest. Since the MCGM had filed a Caveat, he was asked to give notice to the MCGM and the hearing was fixed within an hour i.e. at 12.30 p.m. The unaffirmed Petition, being filed in extreme urgency and when the Petitioner was not available in Mumbai, lacked material particulars/averments and was incomplete. The Petitioner was, therefore, granted liberty to amend the Writ Petition at the time of granting ad-interim reliefs on 9<sup>th</sup> September, 2020 and also on 10<sup>th</sup> September, 2020. Pursuant thereto, the Petition was amended. In the amended Writ Petition, the Petitioner reiterated her allegation that the demolition carried out by MCGM was malafide/malicious, with ulterior motives. In support thereof she interalia relied on a video clip recording the interview of Shri Sanjay Raut, wherein he had allegedly abused the Petitioner. She also relied on the news report pertaining to the demolition of her bungalow, captioned ‘उखाड़ दिया’, meaning - ‘uprooted’ published in the Marathi daily newspaper ‘Saamna’ of 10<sup>th</sup> September, 2020 (i.e. the day after the demolition), of which newspaper Shri Raut is the Executive Editor. Therefore, by our Order dated 22<sup>nd</sup> September, 2020, the Petitioner was allowed to join Shri Raut as party Respondent to the above Writ Petition. It was also alleged by the Petitioner in the above Writ Petition, that Shri Bhagyavant Late, Designated Officer of MCGM, had with malafide and malicious

intent, issued the impugned Notice dated 7<sup>th</sup> September, 2020, followed by an Order of Demolition dated 9<sup>th</sup> September, 2020, and proceeded to demolish the bungalow of the Petitioner. Therefore, by our said Order dated 22<sup>nd</sup> September, 2020, Shri Late was also allowed to be joined in his personal capacity, as party Respondent to the above Writ Petition. Consequently, Shri Bhagyawant Late and Shri Sanjay Raut are joined as Respondent Nos. 4 and 5, respectively, to the above Writ Petition.

3.2. On 28<sup>th</sup> September, 2020, the learned Senior Advocate appearing for MCGM, whilst dealing with the Petitioner's allegation that the impugned action of demolition was with malafide / malicious intent, denied and disputed the said allegation by submitting that a Mukadam of the MCGM had visited the bungalow of the Petitioner on that day at around 1.00 p.m., whereas the Petitioner's tweet pointing out Shri Raut's statements against the Petitioner, was at 5.12 p.m. The Advocate for the MCGM, whilst making the above submission, did not provide the time at which Shri Raut made the offending statements against the Petitioner. In fact, Shri Raut himself has not made any such submission. However, since the learned Senior Advocate for the Petitioner, in response, submitted that there was additional material in the form of tweets etc., which confirms the Petitioner's submissions qua the malafide/malicious intent of the Respondents in proceeding with the demolition of the Petitioner's bungalow, the Court directed the Advocate for the Petitioner to produce in Court, copies of such additional material and also forward the same to the Advocates for the Respondents. The learned Senior Advocate for the Petitioner

thereafter tendered a compilation of tweets from 30<sup>th</sup> August, 2020 onwards and also tendered a copy of one more news report published on the first page of the Marathi Daily 'Saamna' dated 5<sup>th</sup> September, 2020, captioned “मुंबईशी पंगा, पडेल महंगा !” meaning : “**Joining issues with Mumbai will prove costly**”, alongwith a quote (in Marathi) of Shri Raut wherein he states that, “**it is a promise that Shiv Sena will perform Shraddha (i.e. obsequies) of such enemies of Maharashtra**”. A copy of the said compilation was also forwarded to the Advocates for the Respondents. Relying on the said compilation, the Advocate for the Petitioner submitted that the contents of the compilation (copies of tweets and news report dated 5<sup>th</sup> September, 2020) alongwith the video clip and the news report in the Marathi Daily 'Saamna' dated 10<sup>th</sup> September, 2020, exposed the malafide / malicious intent of Shri Raut to cause injury to the Petitioner through the officers of the MCGM. There was no objection raised by the Advocates for the Respondents at the time when the Court called upon the Advocate to submit copies of the tweets and the news report dated 10<sup>th</sup> September, 2020 nor at the time when the Petitioner actually tendered and relied upon the same in Court.

**4. Facts as narrated by the Petitioner before the Court :**

4.1. In the year 2017, the Petitioner purchased Bungalow No. 5 at Chetak Row House No. 41, Nargis Dutt Road, Pali Hill, Bandra (West), Mumbai – 400 050 ('**said Bungalow**').

4.2. On 3<sup>rd</sup> October, 2018, the Petitioner addressed a letter to the Assistant

Commissioner of MCGM stating that the said Bungalow was 42 years old and that the Petitioner had carried out a structural audit, as per which the said Bungalow was categorized under C2-B category thereby implying that structural repairs were required to be carried out with eviction of the owners / occupiers. In her said letter, the Petitioner further stated that the Petitioner would like to carry out repairs under the supervision and guidance of the Structural Auditor. The Report of the Structural Auditor was also enclosed with the said letter, by which permission was sought to carry out the structural repairs.

4.3. The MCGM addressed a letter dated 30<sup>th</sup> October, 2018, to the Petitioner stating that the structural repairs suggested by the Petitioner were major repairs and hence the remedial measures suggested by the Structural Consultant shall be carried out to the satisfaction of the Structural Consultant and a Stability Certificate to that effect shall be submitted to MCGM. The MCGM also recorded in the said letter that the same was issued without prejudice to the authenticity of the structure.

4.4. The MCGM addressed another letter dated 30<sup>th</sup> October, 2018, to the Petitioner stating that no permission was required for carrying out tenantable repairs under Section 342 of the Act.

4.5. The Petitioner had appointed M/s. Paras Consultant and M/s. Tara Enterprises as Structural Consultants for conducting the structural repairs.

4.6. M/s. Paras Consultant addressed a letter dated 17<sup>th</sup> May, 2019, to the

Petitioner stating that the structural repair work of the said Bungalow was completed as per the guidelines and under periodical supervision. M/s. Tara Enterprises issued a Certificate dated 19<sup>th</sup> May, 2019, certifying that they had completed the structural repairs of the said Bungalow. To this Certificate, was annexed a document containing the details of the works which were carried out.

4.7. The Petitioner addressed a letter dated 24<sup>th</sup> May, 2019, to the Assistant Commissioner of MCGM enclosing the Certificate issued by M/s. Paras Consultant, which certifies that the said Bungalow was sound, safe and fit for habitation after completion of the structural repair work.

4.8. The Petitioner thereafter wanted to fully renovate the said Bungalow. She therefore addressed a letter dated 31<sup>st</sup> July, 2019, to the Chairman / Secretary of Pali Hill Residents Association requesting for permission to carry out renovation work in the said Bungalow from 09.00 a.m. to 08.00 p.m.

4.9. The Petitioner also addressed a letter to the Secretary of Chetak Cooperative Housing Society stating that there was continuous leakage from the terrace of the Row House No. 6 belonging to Shri Malhotra, which was causing a hindrance to the renovation work in the Petitioner's Bungalow. The Petitioner requested for permission to resolve and fix the leakage at the earliest. The permissions as sought by the Petitioner were granted on 6<sup>th</sup> August, 2019.

4.10. The entire correspondence referred to in Paragraphs 4.2. to 4.9. above, is placed before the Court.

4.11. In January, 2020, the renovation work of the said Bungalow was completed by a Design and Architect Consultancy Firm called Orange Lane LLP. The Petitioner spent considerable monies for the said renovation so that she could conveniently work from the said Bungalow.

4.12. Upon completion of the renovated work, the said Bungalow was inaugurated on the occasion of Makarsakranti with a Puja, **on 15<sup>th</sup> January, 2020**. The said inauguration and the Puja ceremony received wide publicity and was reported in various online articles around 15<sup>th</sup> January, 2020, and on websites of Quint Entertainment and Filmfare with photographs of frontal / outer facade of the said Bungalow, the puja held at the said Bungalow and the presence of the Petitioner and her family members at the said Bungalow.

4.13. In **April-May 2020**, a magazine known as Elle Decor featured the Petitioner's said Bungalow, wherein detailed description of interiors of the said Bungalow, accompanied with photographs, shows various rooms / areas of the bungalow **complete in all respects**. Some of these rooms / areas are illegally demolished by the MCGM on 9<sup>th</sup> September, 2020.

4.14. The official website of Hindustan Times has, on **26<sup>th</sup> May, 2020**, published an article setting out details of the Petitioner's said Bungalow. The said Article is captioned as under :

***“Step inside Kangana Ranaut’s elegant office-cum studio in Mumbai’s plush Pali Hill. Watch video.***

*Take a look into Kangana Ranaut’s luxurious office located at Pali Hill in Mumbai. The actor’s European aesthetic is reflected in the redesigned space.”*

4.15. The Article reiterates that the Petitioner had launched her Production House Mani Karnika Film in **January, 2020** and had also inaugurated her new office. Alongwith the said Article, photographs of the frontal / outer facade of the said Bungalow and puja being performed in the said Bungalow are also uploaded on the website of Hindustan Times dated 26<sup>th</sup> May, 2020.

4.16. The photographs of the frontal / outer facade of the said Bungalow which appeared on the website of Quint Entertainment on 15<sup>th</sup> January, 2020, show the outer façade of the said Bungalow complete in all respects. Again, the photographs of the interior portions of the said Bungalow, which first appeared in the April-May 2020 issue of the magazine Elle Decor, show the said rooms as completely ready for being used, i.e. alongwith furniture, electrical fittings, sheers, artifacts, etc. It is stated in the said Magazine that the furniture is custom designed by the Interior Designer – Ms. Shabnam Gupta’s, Venture - Peacock Life, the upholstery is from A to Z furnishings, cushions from AA Living, cottons and satins from Good Earth and Oma, the rug used is from Jaipur Rugs, the light fixtures are from Cona as well as from Chor Bazaar, the floorings are from Lorenzo and Notion Flooring, Italian Marble is from Adenwala and some of the tables and stools are sourced from Rajasthan.

4.17. According to the Petitioner, she, being a public-spirited person, consistently airs her views regarding issues of public importance on social media platforms, some of which at times are critical of the affairs and conduct of the administration and the Government of the day. In recent times, the Petitioner has been at loggerheads with the Government of Maharashtra regarding her views over the handling of certain issues which impact the public in general. The expression used by her has displeased and caused anger in certain quarters, particularly a political party (Shiv Sena) which is a part of the Government in Maharashtra, and is also the ruling party in the MCGM. By the end of August, 2020, the Petitioner, in her several tweets, has severely criticized the Mumbai Police. The particulars of her tweets are as under :

**30<sup>th</sup> August, 2020 at 2.01 p.m.** : *“I am more scared of Mumbai police now than the movie mafia goons, in Mumbai and I would need security either from HP government or directly from the Centre, No Mumbai please”.*

**1<sup>st</sup> September, 2020 at 10.40 p.m.** : *“..... instead of condemning public teasing and bullying like this @CPMumbaiPolice is encouraging it, @MumbaiPolice has hit all time low...SHAME !! .”*

**1<sup>st</sup> September, 2020 at 10.54 p.m.** : *“When @CPMumbaiPolice is openly intimidating me like this, encouraging bullying and crime against me, will I be safe in Mumbai ? Who is responsible for my safety ? @PMOIndia.”*

**2<sup>nd</sup> September, 2020 at 11.09 a.m.** : *“You are a big sham in the name of police force, don't you forget not just me all the people tagged got notifications of @CPMumbaiPolice*

*liking the derogatory tweet, trying to prove victim a criminal seems your old dhandha, don't you dare to lie @MumbaiPolice, don't you dare...".*

In response, the Mumbai Police tweeted on the same day that “*This tweet has never been liked by @CPMumbaiPolice-the cyber police station has been asked to examine the screenshot.*”

**3<sup>rd</sup> September, 2020, at 12.27 p.m. :** “*Sanjay Raut Shiv Sena leader has given me an open threat and asked me not to come back to Mumbai, after Aazadi graffitis in Mumbai streets and now open threats, why Mumbai is feeling like Pakistan occupied Kashmir ?.*”

**4<sup>th</sup> September, 2020, at about 12.53 p.m. :** “*I see many people are threatening me to not come back to Mumbai so I have now decided to travel to Mumbai this coming week on 9<sup>th</sup> September, I will post the time when I land at the Mumbai airport, kisi ke baap main himmat hai toh rok le*”.

4.18. In view of various threats being given to the Petitioner, including threats of harm if she entered Mumbai, the Petitioner was compelled to seek assistance/security and was given protection under Y-plus category by the Central Government. The Petitioner could come to Mumbai only under such protection.

4.19. On the first page of the Marathi daily newspaper ‘Saamna’ dated 5<sup>th</sup> September, 2020, of which Shri Sanjay Raut is an Executive Editor, a news report under the following caption appeared :

**मुंबईशी पंगा, पडेल महंगा!**

**Meaning :** Joining issues with Mumbai, will prove costly.

In the said article / news report, it is stated that Kangana Ranaut's (Petitioner's) reference to Mumbai as Pakistan Occupied Kashmir, thereby joining issues with Mumbai and Mumbaikars, is going to prove costly. It is further stated that the Home Minister has stated that Kangana has no right to stay in Mumbai and Maharashtra. It is further stated that Shiv Sainiks have given a stern warning to Kangana to the effect that if she steps into Mumbai, their ladies will beat her with chappals / shoes.

On the same page, the quote of Shri Sanjay Raut appeared as under :

 मुंबई मराठी माणसाच्या बापाचीच आहे. ज्यांना हे मान्य नसेल त्यांनी त्यांचा बाप दाखवावा. शिवसेना अशा महाराष्ट्र दुश्मनांचे श्राद्ध घातल्याशिवाय राहणार नाही हे वचन आहे. मुंबईबाबत काहीही बरळणाऱ्या अशा मेंटल केसेस आरोग्य खात्याने हाताळाव्यात. ■ संजय राऊत, शिवसेना नेते, खासदार

**Meaning** : Mumbai belongs only to forefathers of Marathi people. Those who do not agree with this, they should show who are their fathers. **It is a promise that Shiv Sena will perform *Shraddha* (i.e. obsequies) of such enemies of Maharashtra.** The Health Department should handle mental cases of such persons also who talk any nonsense about Mumbai.

Sanjay Raut, Shiv Sena Leader, Member of Parliament.

4.20. On the same day, i.e. on 5<sup>th</sup> September, 2020, Shri Raut has answered in Hindi, certain questions put to him by a reporter of News Nation Channel in Hindi. The DVD containing the video clip of the said interview in Hindi is tendered in Court by the Petitioner, the English version of which is as under :

**Sanjay Raut** : I am of the view that such person will have to bring her father here, and

show us the father if there is one.

**News Nation** : Will Shiv Sena stop her. Some leaders have stated that they will stop her and beat her.

**Sanjay Raut** : Shiv Sena is not just the Jaagir of Maharashtra, all parties are there in it, all persons are in it, all of us will meet and decide.

**News Nation** : It is your Government, will you take any action against the law ?

**Sanjay Raut** : Kya Hota Hai Kanoon ? Has the girl respected the law in what she has spoken ? Why are you advocating for that Haramkhor girl, who has insulted Shivaji Mahajraj and has insulted Maharashtra ? Are you on her side ? Is your Channel supporting her ?

(Sanjay Raut walks away in anger)

**News Nation** : Thanks for talking to News Nation.

4.21. Again, on the same day, i.e. Saturday, 5<sup>th</sup> September, 2020 at about 1.00 p.m. according to the MCGM, the Mukadam of the MCGM visited the Petitioner's said Bungalow. According to Shri Late / MCGM the Mukadam has submitted his purported detection report to his superior on the same day.

4.22. On Monday, 7<sup>th</sup> September, 2020, at about 12.30 p.m. Shri Late – Executive Engineer / Designated Officer alongwith other officers of the MCGM visited the said Bungalow. They were there till about 1.45 p.m. The said officers took measurements in the said Bungalow ; prepared handwritten inspection report ; noticed a workman who was doing waterproofing work due to leakage, prepared and

uploaded the First Inspection Report and also prepared a Notice dated 7<sup>th</sup> September, 2020 (**‘impugned Notice’**) purportedly issued under Section 354A (1) of the Act, stating that he was satisfied that the Petitioner had unlawfully commenced and was unlawfully carrying on erection of building / erection of work described in the Schedule to the impugned Notice, and further *interalia* stating that:

*“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.” (emphasis supplied)*

4.23. On 8<sup>th</sup> September, 2020, the impugned Notice was pasted on the outer door of the said Bungalow at about 10.03 a.m.

4.24. On the same day, i.e. on 8<sup>th</sup> September, 2020, though the Petitioner was out of town, her Advocate submitted a reply to the MCGM at 4.00 p.m., *interalia* stating that, *“no work is being carried out by my client in her premises as **falsely understood by you**”* and *“therefore the notice issued by you as **stop work notice** is **absolutely bad-in-law** and appears to have been issued only to intimidate my client by **misusing your dominant position**.”* The Advocate for the Petitioner also recorded in the said reply letter dated 8<sup>th</sup> September, 2020 that, *“all allegations made by your department **by resorting to falsehood** shall be legally dealt with by my client under the appropriate provisions of law and therefore my client who is expected to arrive in Mumbai*

*tomorrow requests for a maximum of seven days to respond to and duly address the concerns raised in your said Notice.”* The Advocate for the Petitioner **called upon Respondent No. 4 - Shri Late not to misuse his dominant position to cause prejudice to his client with any hidden agenda coupled with ulterior motive.**

4.25. On 8<sup>th</sup> September, 2020, the MCGM filed a Caveat under Section 148A of the Code of Civil Procedure, 1908 before this Court expecting that a Writ Petition would be filed by the Petitioner before this Court at any time and an urgent Application seeking urgent Orders would be moved by the Petitioner before this Court.

4.26. On 8<sup>th</sup> September, 2020 Shri Late also sent a letter to the duty officer Khar Police Station, the contents of which are mentioned in ground J (vii) of the amended Writ Petition.

4.27. The Application made by the Advocate for the Petitioner interalia seeking a maximum of 07 days' time to respond to the impugned Notice received by her on 8<sup>th</sup> September, 2020 was rejected. Shri Late passed an Order on 9<sup>th</sup> September, 2020, stating therein *“it has been noticed that after receipt of the notice you have not stopped carrying the work and continued the work. Under these circumstances your request for maximum 07 days to respond to and duly addressed is rejected herewith.”* In the operative part of the Order of demolition dated 9<sup>th</sup> September, 2020, Shri Late has whilst rejecting the reply filed by the Petitioner stated that he was satisfied that the Petitioner was carrying out the work as mentioned in the Notice Schedule, and had

failed to produce the permission/ approval/ sanction granted to carry out the changes in the approved B.C.C. plan dated 7<sup>th</sup> March, 1979. Therefore, the work carried out by the Petitioner as mentioned in the Notice Schedule was declared as unauthorized. It was also stated that he was satisfied that the Petitioner had not stopped the work and therefore, the notice structure as mentioned in the Schedule of the Notice was liable to be forthwith demolished.

4.28. The said Order dated 9<sup>th</sup> September, 2020, was pasted on the same day i.e. on 9<sup>th</sup> September, 2020, at 10.35 a.m., when the MCGM's officers were already present outside the Petitioner's said Bungalow alongwith a JCB and other equipments, ready to demolish the said Bungalow, even prior to the pasting of the said Order. This is established from the Petitioner's tweet dated 9<sup>th</sup> September, 2020 at 10.19 a.m. wherein she has stated that. "the Maharashtra Government and **their goons**" are at her property all set to illegally break it down.

4.29. On 9<sup>th</sup> September, 2020, at around 11.30 a.m. the present Writ Petition was moved in extreme urgency and the Petitioner's Advocate himself went to the said Bungalow to serve a copy of the Writ Petition on the officers of MCGM and also to inform them that the matter was sub-judice and kept for hearing at 12.30 p.m. The officers of MCGM did not pay any attention to what the Advocate for the Petitioner had to say; instead they locked the said Bungalow of the Petitioner from inside and with malafide intent demolished 40% of the said Bungalow and damaged the following items belonging to the Petitioner :

Sr No.	Item	Approx. Price in INR
1	Three Seater Vintage Sofa	8 Lakhs
2	Two Seater Vintage Sofa	5 Lakhs
3	Coffee Table	2 Lakhs
4	Two Antique Mirrors	10 Lakhs
5	Editing equipment and desk top in editing room	15 Lakhs
6	Crystal chandelier	15 Lakhs
7	Italian Lights	8 Lakhs
8	Exclusive Designer Chair	5 Lakhs
9	Music Speakers	90,000
10	Antique Pieces	6 Lakhs
11	Cashmere Shawl	80,000
12	Coffee Machine	4 Lakhs
13	Victorian Cutlery	3 Lakhs
14	Cushions and Rugs	6 Lakhs
15	Show Pieces	8 Lakhs
16	10-15 1 <sup>st</sup> edition books collected from all over the world over the years	5 Lakhs
17	Toilet sheets, basin, other toiletries	20 Lakhs
18	Other items like small furniture, pots, huge planters	10 Lakhs
19	Doors and windows	30 Lakhs
20	Civil and concrete work	More than 1 Crore

4.30. On 9<sup>th</sup> September, 2020, this Court passed an ad-interim Order restraining the MCGM from carrying out any further demolition and also recorded the manner in which the MCGM conducted itself despite having filed a Caveat expecting a Court hearing, i.e. the Advocate for the MCGM did not have a copy of the Petition which was duly served on MCGM and neither did the Advocate have a copy of its own impugned Notice dated 7<sup>th</sup> September, 2020 issued under Section 354A of the Act to the Petitioner and no officer of the MCGM was available to instruct the Advocate, when the Advocate first appeared before the Court.

4.31. This Court, by its Order dated 9<sup>th</sup> September, 2020, rendered its prima facie finding that the MCGM's conduct smacked of malafides. However, in none of the Affidavits filed by MCGM any justification or explanation is offered in regard to such conduct.

4.32. The day after the demolition i.e. 10<sup>th</sup> September, 2020, the Newspaper 'Saamna' of which Shri Raut is the Executive Editor, reported the demolition on its first page in a manner of rejoicing, i.e. with the headline "उखाड़ दिया" meaning : 'uprooted'. In the said newspaper report, it is interalia stated that the Petitioner who was unnecessarily spoiling the name of the Mumbai Police by comparing Mumbai with Pakistan Occupied Kashmir **has received a good blow from MCGM.**

## 5. AFFIDAVITS FILED BY THE PARTIES :

- i. On 10<sup>th</sup> September, 2020, MCGM filed its Affidavit in Reply to the unamended Writ Petition.
- ii. On 17<sup>th</sup> September, 2020, MCGM filed its Additional Affidavit in Reply to the amended Writ Petition.
- iii. On 20<sup>th</sup> September, 2020, the Petitioner filed its Affidavit in Rejoinder to the Additional Affidavit in Reply of MCGM dated 17<sup>th</sup> September, 2020.
- iv. On 24<sup>th</sup> September, 2020, MCGM filed its Affidavit in Sur Rejoinder.
- v. On 27<sup>th</sup> September, 2020, the Petitioner filed her Affidavit, in response to the Affidavit of MCGM dated 24<sup>th</sup> September, 2020.
- vi. On 28<sup>th</sup> September, 2020, Respondent No. 5 filed his Affidavit in Reply.

vii. On 29<sup>th</sup> September, 2020, Shri Late - Respondent No. 4 filed his Affidavit in Reply i.e. in his personal capacity.

**6. WRITTEN SUBMISSIONS FILED BY THE PARTIES :**

i. On 5<sup>th</sup> October, 2020, the written submissions were filed by the Petitioner, MCGM, as well as by Respondent Nos. 4 and 5.

ii. When the Court was going through the Affidavits and the written submissions at the time of dictation of this Order, it was noted that the Respondent No. 5 had not dealt with the compilation of tweets / news reports of ‘Saamna’ dated 5<sup>th</sup> September, 2020 submitted by the Petitioner on 28<sup>th</sup> September, 2020, in the circumstances set out hereinabove. This Court therefore, on 29<sup>th</sup> October, 2020, informed Advocate Pradeep Thorat about the same, and also informed him that he could still make his submissions with regard to the same, if his Client so desired. Thereafter, Advocate Thorat tendered his additional written submissions on 30<sup>th</sup> October, 2020.

**7. SUBMISSIONS MADE ON BEHALF OF THE PETITIONER IN ADDITION TO WHAT IS STATED ABOVE:**

7.1. Relying on Sections 44, 45 (1), 52, 53 and 54 of the Maharashtra Regional and Town Planning Act, 1966 (the ‘MRTP Act’) ; Sections 342, 351 and 354A of the Mumbai Municipal Corporation Act, 1888 ; Circular dated 15<sup>th</sup> March, 2012 of MCGM ; the decisions of the Supreme Court in the case of *Muni Suvrat*

*Swami Jain v/s. Arun Gaikwad*<sup>1</sup>; *MCGM v/s. Sunbeam High Tech Developers*<sup>2</sup> and the decisions of this Court in the case of *Abdul Razzaq Sunesra v/s. MCGM*<sup>3</sup>; *MCGM v/s. Jagdishchandra Mehra*<sup>4</sup>; *Sopan Maruti Thopte v/s. Pune Municipal Corporation*<sup>5</sup>, the Petitioner has submitted that invocation of Section 354A of the Act is illegal and an abuse of the powers and authority vested under the said Statute.

7.2. In the present case, the provisions of Section 354A of the Act have been invoked under the false pretext that there was ongoing work of construction at the Petitioner's Bungalow. The documents and material on record, which includes the photographs relied upon by the Petitioner as well as the MCGM, establish beyond an iota of doubt that the alleged unauthorized works were already in existence and there was no ongoing work of construction as alleged by MCGM. Section 354A was invoked only to deprive a fair opportunity to the Petitioner to take steps in accordance with law to seek redress and if required, to seek regularization. The fact that there was no ongoing work of construction is evident from the detailed reasons set out in paragraph 45 of the written submissions filed on behalf of the Petitioner.

7.3. It is settled law that malafides cannot be established by direct evidence but may be discernible from circumstances.

7.4. The impugned Notice, order of demolition and its execution are vitiated by malice in fact, for the reasons set out in paragraph 73 of the written submissions and

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1 2006 8 SCC 590

2 2019 SCC Online SC 1389

3 2013 SCC OnLine Bom 832

4 2018 SCC OnLine Bom 4113

5 1996 (1) Mh LJ 963

irrespective of malice in fact, the actions are vitiated by malice in law as explained in paragraph 76 of the written submissions of the Petitioner.

7.5. In order to prove that the impugned Notice, Order of demolition and action are vitiated by malice in fact and, in any case, by malice in law, the Petitioner has relied on the decisions of the Supreme Court in *Rajneesh Khajuria v/s. Wockhardt Ltd.*<sup>6</sup>; *State of Andhra Pradesh v/s. Govardhanlal Pitti*<sup>7</sup>, *State of Punjab v/s. Gurdial Singh*<sup>8</sup>, *Kalabharti Advertising v/s. Hemant Narichania*<sup>9</sup>, *Smt. S.R. Venkatraman v/s. Union of India*<sup>10</sup>, the decision of the Calcutta High Court in *Birendra Kumar Singh v/s. Union of India*<sup>11</sup> and the decision of this Court in *Reserve Bank Employees' v/s. State of Maharashtra*<sup>12</sup>.

7.6 In the present case, the exercise of power by Respondent Nos.1 to 4 is colourable and a fraud on the Statute, i.e. the Act. Every power vested in a public body or authority has to be used honestly, bonafide and reasonably. In support of this submission, the Petitioner has relied upon the decisions of the Supreme Court in *Shrisht v/s. Shaw Bros*<sup>13</sup>, *State of Bihar v/s. P.P. Sharma*<sup>14</sup> and *S. Pratap Singh v/s. State of Punjab*<sup>15</sup>.

7.7. There are several lacunas in the Inspection Report at Exhibit-B / Page

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6 (2020)3 SCC 86

7 (2003)4 SCC 739

8 (1980) 2 SCC 471

9 (2010) 9 SCC 437

10 (1979) 2 SCC 491

11 2002 SCC Online Cal 857

12 2014 SCC Online Bom 1558

13 (1992) 1 SCC 534

14 1992 Supp (1) SCC 222

15 AIR 1964 SC 72

No. 32 of the MCGM's Affidavit dated 10<sup>th</sup> September, 2020, which are listed in Part-C of the written submissions filed on behalf of the Petitioner.

7.8. The MCGM claims that the Detection Report was prepared on 5<sup>th</sup> September, 2020 at 1.00 p.m. However, the same was not produced before the Court.

7.9. The Petitioner, through her Affidavit in Rejoinder, has produced a Detection Report Register, which was available online and which shows that the detection took place on 7<sup>th</sup> September, 2020 and not on 5<sup>th</sup> September, 2020.

7.10. The MCGM has filed its Affidavit in Reply dated 10<sup>th</sup> September, 2020, Additional Affidavit in Reply dated 17<sup>th</sup> September, 2020, and Affidavit in Sur Rejoinder dated 24<sup>th</sup> September, 2020. In each of these Affidavits, MCGM has taken inconsistent pleas and has tried to improve its case. The stand taken in the Affidavits are also contrary to the various documents produced by MCGM. Some of the inconsistent pleas of MCGM have been set out / listed in paragraph 20 of the written submissions filed on behalf of the Petitioner.

7.11. No attempt has been made by MCGM to explain the discrepancies in the documents and the contentions raised as listed / set out in paragraph 23 of the written submissions.

7.12. The Petitioner has since inception pleaded that had the Petitioner been given a fair opportunity prior to demolition, the Petitioner could have consulted an expert and taken remedial steps as required, including giving a proper response contesting the allegations, and if required, apply for regularization under Section 53(3)

of the MRTP Act.

7.13. The undue haste with which the said Bungalow was demolished has deprived the Petitioner of a fair opportunity to apply for regularization, if so required.

7.14. The Circular dated 28<sup>th</sup> February, 2020, issued by MCGM, also clearly contemplates regularization of internal work on payment of penalty.

7.15. As held by the Delhi High Court in the case of *Sayeed Ali v/s. Municipal Corporation of Delhi*<sup>16</sup> and by this Court in the case of *G.J.Kanga v/s. S.S.Basha*<sup>17</sup>, a case of unauthorized construction does not always warrant a demolition.

7.16. The act of demolition is in breach of the Orders passed by this Court restraining demolition in view of the current pandemic.

7.17. At a belated stage, in a Sur Rejoinder, MCGM has raised a contention that the Writ Petition ought not to be entertained and the Petitioner should be relegated to the remedy of a Civil Suit.

7.18. There are no disputed questions of facts as alleged by the MCGM.

7.19. In arguments, MCGM contended that a Civil Suit is the norm and entertaining of a Writ Petition can only be in exceptional circumstances, which according to MCGM, the Petitioner has not made out. Reliance placed by MCGM in

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16 1995 Supp (4) SSC 426

17 1992 SCC Online Bom 313

support of this contention to the Judgment of this Court in the case of *Abdul Karim Ahmed Mansoori v/s. Municipal Corporation of Greater Mumbai*<sup>18</sup> is misconceived.

7.20. Section 515A of the Act incorporates a bar of jurisdiction and provides that any notice issued, Order passed, or direction issued by the Designated Officer, under Section 351 or 354A of the Act shall not be questioned in any Suit or legal proceedings. The constitutional validity of this provision was challenged before this Court in the case of *Abdul Razzaq Sunesra v/s. MCGM*<sup>19</sup>. A Division Bench of this Court (Coram: Dr. D.Y. Chandrachud J as he then was and S. C. Gupte J) after analyzing the Scheme of the Act upheld the validity of the provision and held that a remedy of a petition under Article 226 of the Constitution of India is available to the Petitioner.

7.21. The Supreme Court has held that the High Court is justified in exercising its powers to the exclusion of all other remedies when it finds that the action of the State, or its instrumentality, is arbitrary and unreasonable and as such violative of Article 14 of the Constitution of India.

7.22. In support of the submission that the Petitioner is justified in filing the above Writ Petition for reliefs sought therein, the Petitioner has also relied on the decisions of the Supreme Court in *ABL International v/s. Export Credit*<sup>20</sup>; *Popatrao*

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18 2014 (1) Mh.L.J. 227

19 2013 SCC OnLine Bom 832

20 2004 3 SCC 553

*Patil v/s. State of Maharashtra*<sup>21</sup>; *Century Spinning and Manufacturing Company v/s. Ulhas Nagar Municipal Council*<sup>22</sup> and *Sayed Maqbool Ali v/s. State of UP*<sup>23</sup>.

7.23. The impugned Notice, Order of demolition and its execution being ex-facie illegal, the same ought to be set aside. The Petitioner ought to be permitted to take such steps as are required to make the said Bungalow habitable, so that the Petitioner can immediately start occupying and using the same. As regards the restoration of the demolition work, the Petitioner be allowed to take such steps as this Court may deem fit and proper in accordance with law, under the supervision of the Court. The Petitioner is also entitled to compensation to make good the loss and damage caused to the Petitioner as a result of the illegal and highhanded action of MCGM.

## **8. SUBMISSIONS MADE ON BEHALF OF MCGM :**

8.1. The learned Senior Advocate appearing for MCGM has made the following submissions :

8.2. In view of the false denials / allegations made in the Writ Petition, several disputed questions of fact arise which cannot appropriately be decided in a Writ.

8.3. The Division Bench of this Court in the case of *Abdul Karim Ahmed*

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21 2020 SCC Online SC 291

22 AIR 1971 SC 1021

23 2011 15 SCC 383

*Mansoori v/s. MCGM* (supra), has held that notices under Sections 351 and 354A of the Act could and should be challenged only by filing a Civil Suit.

8.4. The Petitioner in the Writ Petition has not made any averments or submissions regarding any special facts or circumstances for challenging the notice and Order of demolition under Section 354A (1) of the Act under Article 226 of the Constitution of India, instead of following the norm of challenging the same in a Civil Suit.

8.5. The record establishes that the Petitioner has unlawfully carried out substantial alteration and additions to the property, has made false statements / denials and has also withheld material facts.

8.6. The record establishes that the Petitioner brazenly and unlawfully carried out extensive alternations and additions contrary to the approved building plan to the bungalow and has sought to make evasive and later demonstrably false denials regarding carrying out such unlawful work, as set out in Part III of the written submissions of the MCGM.

8.7. The Petitioner has falsely alleged that the work was not ongoing on 5<sup>th</sup> / 7<sup>th</sup> September, 2020 and has maintained a studied silence on when according to her such unlawful work had been done.

8.8. The Petitioner has made allegation of malafide and harassment to cover

up the fact that she has unlawfully carried out substantial alternations and additions in the said Bungalow contrary to the building plan and in an attempt to protect such unlawful alternations and additions.

8.9. The impugned Notice issued under Section 354A lists in its Schedule (description of work) the ongoing renovation and finishing work to the unauthorized portion of the premises, which is beyond the approved plan dated 7<sup>th</sup> March, 1979 and thereafter, Items ‘a’ to ‘n’ lists / gives specific details of the 14 unlawful additions and alterations.

8.10. The impugned Notice not only disclosed the said 14 unlawful additions and alterations contrary to the approved plan, but also the presence of five workmen with material (plywood and construction debris) carrying on renovation and finishing work throughout the said Bungalow, including the unauthorized portions.

8.11. The photographs annexed to the MCGM’s Affidavit in Sur Rejoinder at Exhibit-B, pages 156-170 (and particularly pages 156, 160, 161 and 163) show workmen with materials and sacks containing plywood pieces and construction debris and at Exhibit-C at pages 192 to 195 show the presence of five workmen and the supervisor in the property at the time of the inspection on 7<sup>th</sup> September, 2020.

8.12. In the Petitioner’s Advocate’s Reply dated 8<sup>th</sup> September, 2020, the Petitioner falsely alleged that, “*that no work is being carried out by my client in her premises as “falsely understood by you”*” and sought seven days time to file a detailed

reply.

8.13. The Petitioner did not dispute / deny that the additions and alterations listed in the Notice issued under Section 354A of the Act, have been carried out.

8.14. That in the amended Writ Petition, the Petitioner again did not dispute the alterations and additions carried on and listed in the impugned Notice, as also the presence of workmen, material and tools at the property at the time of inspection on 7<sup>th</sup> September, 2020. Instead the Petitioner stated that, “*Petitioner was unable to comprehend the details given in the Schedule of the notice clearly as the same required expert consultation*”, “*are merely operational use of area of said bungalow and cannot be said to be unauthorized or illegal*” and “*the first inspection report does not mention names of any of the workmen 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*”.

8.15. That in paragraph 7 C (g) and Ground G (ix), the Petitioner has made evasive “denials” regarding the unlawful work, alterations and additions carried on by her.

8.16. That in the Affidavit in Rejoinder, the Petitioner for the first time made averments, including denials that the sanctioned plans establish that illegal work was carried out, and that at the time of inspection six workmen alongwith material 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 and alterations, and that no photographs of those six workmen have been produced.

8.17. That if Section 354A of the Act is to be restricted only to the actual erection work ongoing on the date of the inspection and the issuance of the impugned Notice, it would result in an absurd situation, wherein with respect to work on the property which is ongoing, the portion which has been done yesterday, or a few days ago cannot be the subject matter of Section 354A of the Act and only the portion of the work which is actually ongoing on the day of inspection can be made the subject matter of Section 354A of the Act.

8.18. The allegations of malafide, bias and conspiracy are both inadequate to make a plea of malafide and are also untenable in law.

8.19. In the case of *Rajneesh Khajuria v/s. Wockhardt limited*<sup>24</sup>, the Supreme Court has held that such allegations of malafides “demands of proof of a high order of credibility”.

8.20. The untenability of the case of malafides pleaded is apparent from the fact that the Petitioner’s statement (tweet) referred to in paragraph 4-A of the Writ Petition was made at around 05.00 p.m. on the 5<sup>th</sup> September, 2020, whereas the first visit to the Petitioner’s Bungalow by the Mukadam of the MCGM was around 1.00 p.m. on the same day, i.e. well before the Petitioner’s tweet.

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24 (2020) 3 SCC 86 (paras 16-20)

8.21. That it is well settled that even if malice is to be attributed to a Government or a Statutory Local Authority, it cannot be a case of malice in fact, i.e. personal ill will or spite of the Government / Local Authority. It could only mean malice in law, i.e. legal malafides, or in other words, exercise of statutory power for purposes foreign to those for which it is in law intended.

8.22. Even if this Court comes to the conclusion that Section 354A of the Act could not have been invoked, as the erection of the unlawful additions and alterations was not ongoing / had allegedly been completed prior to 7<sup>th</sup> September, 2020, the Petitioner cannot and should not be permitted to reconstruct the unlawful additions and alterations which were demolished on 9<sup>th</sup> September, 2020. In support of this contention, reliance is placed on the decision of the Supreme Court in *Municipal Corporation of Greater Mumbai v/s. Sunbeam High Tech Developers Private Limited* (supra), wherein it is held that even if the Corporation violates the statutory procedure while demolishing a building, but the structure is illegal, the Court should not permit the illegal structure to be re-erected and it is only where the Court comes to a finding that the structure was constructed legally, that it can after recording a clear cut finding as to the dimensions of the structure, permit reconstruction.

8.23. That the fact of the movables and articles allegedly damaged or destroyed during the demolition, the same is disputed as also its value. In the absence of proper proof, such allegations and claims for compensation for loss allegedly

caused, cannot be entertained and adjudicated in the present proceedings.

**9. SUBMISSIONS MADE ON BEHALF OF RESPONDENT NO. 4 :**

9.1. Shri Sakhare, learned Senior Advocate appearing for Respondent No. 4, has submitted that the Petitioner has impugned the action taken by Respondent No. 4 under Section 354A of the Act, in his official capacity, on the ground of alleged malafides against Respondent No. 4. He further submitted that Respondent No. 4 adopts the submissions of MCGM and makes further submissions as follows :

9.2. The Petitioner who never added Respondent No. 4 as a party and had no allegations against Respondent No. 4 even after an exhaustive amendment to the Writ Petition, finally sought to take refuge under ‘malice in fact’ against Respondent No. 4.

9.3. The allegations of malice in fact cannot be gone into under the Writ jurisdiction of this Court under Article 226 of the Constitution of India.

9.4. The allegations of malafides are vague, general in nature and without material particulars.

9.5. The allegations of ‘malice in law’ can only be made against the State and therefore by adding Respondent No. 4 as a party in his personal / individual capacity, the Petitioner has sought to lay the foundation of the challenge on the principle of ‘malice in fact’.

9.6. The Supreme Court in the case of *The Regional Manager & Anr. v/s. Pawan Kumar Dubey*<sup>25</sup> has held as under :

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25 (1976) 3 SCC 334, para 15

*“15. We repeat that, before any such case of “malice in law” can be accepted, the person who alleges it must satisfactorily establish it on proved or admitted facts as it was in Kulkarni’s case. Where the allegations are of malice in fact, which are generally seriously disputed and the case cannot be satisfactorily decided without a detailed adduction of evidence or cross-examination of witnesses, courts will leave the party aggrieved to an ordinary civil suit. This rule, relating to exercise of discretionary powers under Article 226, is also well settled.”*

9.7. The allegations of ‘malice in fact’ thus cannot be gone into by this Court in Writ jurisdiction and given the pleadings of the Petitioner on the issue of ‘malice in fact’, her case, as it stands, deserves dismissal in limine.

9.8. The Supreme Court in the case of ***Rajneesh Khajuria v/s. Wockhardt Limited & Anr.*** (supra) has approved its earlier Judgment in the case of ***HMT Limited v/s. Mudappa***<sup>26</sup> and held that malice in fact cannot be attributed to the State and it could only be ‘malice in law’. The relevant passage of the Judgment reads as under :

*“It was observed that where malice was attributed to the State, it could not be a case of malice in fact, or personal ill will or spite on part of the State.”*

9.9. Therefore, the law as it stands requires detailed adducing of evidence and cross-examination of witnesses for malice in fact to be proved and therefore the Petitioners case deserves a discountenance at the threshold.

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26 (2007) 9 SCC 768

9.10. The case of ‘malice in fact’ in fact requires clear and specific allegations of personal bias or oblique motives, and ought not to be entertained on the basis of general and vague allegations made against the Respondents or on mere conjectures or surmises. The Petitioner has made vague and general allegations of malafides without giving any material particulars thereof.

9.11. The only specific reference to Respondent No. 4 is at paragraph 2A of the Writ Petition, the relevant portion of which reads as under :

*“2A. Respondent No. 4 is the designated officer of Respondent No. 1. He has malafidely issued the impugned notice dated 07/09/2020 and has passed the impugned order dated 09/09/2020 and has acted in the manner as set out hereinafter. He is added herein in his individual capacity. The Respondent No. 5....”*

9.12. This obscurity of the Petitioner in fact brings to light one aspect that the Petitioner has no case, even after two amendments to the Writ Petition and an array of Rejoinder and Sur-Sur Rejoinder, to prove her case.

9.13. When a person comes with a case of malafides, there is a heavy burden of proof on the person, who alleges such malafides and in the present case, the Petitioner has not adduced any proof to substantiate the allegations of malafides.

9.14. The Supreme Court in *Ajit Kumar Nag v/s. General Manager (PJ), Indian Oil Corpn. Haldia & Ors.*<sup>27</sup>, has held as under :

*“56.....It is will settled that the burden of proving malafide is on*

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27 (2005) 7 SCC 764 at para 56

*the person making the allegations and the burden is ‘very heavy’. (vide **E.P.Royappa v. State of T.N.**). There is every presumption in favour of the administration that the power has been exercised bonafide and in good faith. It is to be remembered that the allegation of malafide are often more easily made than made out and the very seriousness of such allegations demands proof of a high degree of credibility. As Krishna Iyer J. stated in **Gulam Mustafa vs. State of Maharashtra** (SCC p. 802 para 2) : “It (malafide) is the last refuge of a losing litigant.”*

9.15. The Petitioner has neither made any specific averments nor adduced any material / proof / document against Respondent No. 4 to prove and / or establish that the action of Respondent No. 4 was borne out of any malafide, malice, ill-will or spite that Respondent No. 4 has in his individual capacity qua the Petitioner.

9.16. In the case of **E.P.Royappa v/s. State of Tamil Nadu and Others**<sup>28</sup>, decided by a five Judge Bench of the Supreme Court, it has been held as under :

*“92. Secondly, we must not also overlook that the burden of establishing malafides is very heavy on the person who alleges it. The allegations of malafides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility.*

*.....Such is the judicial perspective in evaluating charges of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up – these*

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28 (1974) 4 SCC 3 para 92

*considerations are wholly irrelevant in judicial approach but because otherwise, functioning effectively would become difficult in a democracy. It is from this standpoint that we must assess that merits of the allegations of malafides made by the petitioner against the second respondent.”*

9.17. All the steps / action under Section 354A of the Act have been taken by Respondent No. 4 in his official capacity as a Designated Officer of MCGM, and are in accordance with law.

9.18. The inspection conducted by Respondent No. 4 on 7<sup>th</sup> September, 2020 revealed large scale unlawful additions and alterations and also 5-6 workmen engaged in doing finishing work almost throughout the premises. Materials such as plywood and construction debris were found on the premises and for this reason Respondent No. 4 issued the impugned Notice under Section 354A of the Act. The Petitioner in her Reply (through her Advocate), neither contended that the ongoing work had been stopped, nor produced any permission for the said work. Since the reply of the Petitioner was evasive, devoid of any merit and ex-facie fallacious, contending that no work was going on (per contra in the Petition, it is alleged that waterproofing work was going on), Respondent No. 4 has passed a speaking Order for demolition action under Section 354A (2) of the Act.

9.19. It is therefore clear that the action taken by Respondent No. 4 is in bonafide discharge of his statutory duties and in his official capacity as the Designated

Officer, H/West.

9.20. The present facts reveal that it is a clear case where the allegations of malafides have been resorted to as the last refuge of a losing litigant and apart from being vague, general in nature, devoid of material particulars and / or without any proof, are entirely false and misconceived.

9.21. The Writ Petition is therefore not maintainable and even otherwise, devoid of any merit and liable to be dismissed.

#### **10. SUBMISSIONS ON BEHALF OF RESPONDENT NO. 5 :**

10.1. Respondent No. 5, Shri Sanjay Raut, who has been impleaded in the above Writ Petition pursuant to the Order dated 22<sup>nd</sup> September, 2020 passed by this Court, filed his Affidavit in Reply on 28<sup>th</sup> September, 2020, and made the following submissions on 5<sup>th</sup> / 30<sup>th</sup> October, 2020.

10.2. The present Writ Petition involves various disputed questions of facts, which cannot be adjudicated under Article 226 of the Constitution of India. Hence, the above Writ Petition deserves to be dismissed with costs.

10.3. Respondent No. 5 is not concerned with the action of demolition taken by MCGM and the present dispute is only between the Petitioner and the Respondent Nos. 1 and 2, where Respondent No. 5 has been unnecessarily dragged.

10.4. The action initiated by MCGM under the Act is an independent action and the same cannot be said to have been initiated at the behest of Respondent No. 5.

10.5. Respondent No. 5 is neither the complainant nor is he concerned with

the action taken against the Petitioner in any manner and therefore he cannot be made liable for payment of compensation to the Petitioner.

10.6. The Petitioner has not stated as to how Respondent No. 5 is concerned with the facts involved in the present Writ Petition and it appears that Respondent No. 5 has been impleaded in the above Writ Petition as a Respondent only to fulfill some ulterior motives of the Petitioner.

10.7. Except vague allegation at page, 8, paragraph No. 4A of the Writ Petition, which is also repeated on Page 25 of the Writ Petition, there is no other averment made against Respondent No. 5.

10.8. Respondent No. 5 has, in his Affidavit dated 28<sup>th</sup> September, 2020, denied the allegation that he has threatened the Petitioner in a news video channel 'News Nation'.

10.9. Respondent No. 5 has not in any manner threatened the Petitioner and has only expressed his opinion regarding the dishonesty of the Petitioner in response to her statement, wherein she compared Mumbai to Pak Occupied Kashmir.

10.10. Respondent No. 5 has only responded to the derogatory statements made by the Petitioner insulting the State of Maharashtra and Mumbai.

10.11. Respondent No. 5 never responded to any of the tweets of the Petitioner, and it is falsely contended that in relation to the statement made by the Petitioner on 5<sup>th</sup> September, 2020, Respondent No. 5 has threatened the Petitioner.

10.12. In so far as malice in fact is concerned, the Petitioner is not only required

to aver the same specifically, but heavy burden lies on her to prove the same, as held in the case of *Regional Manager v/s. Pawan Kumar Dubey* (supra).

10.13. The Supreme Court in case of *Ratnagiri Gas & Power Private Limited v/s. RDS Projects Limited*<sup>29</sup> has held as follows :

*“24. Even otherwise the findings recorded by the High Court on the question of malafides do not appear to us to be factually or legally sustainable. While we do not consider it necessary to delve deep into this aspect of the controversy, we may point out that allegations of malafides are more easily made than proved. The law casts a heavy burden on the person alleging malafide to prove the same on the basis of facts that are either admitted or satisfactorily established and / or logical inferences deducible from the same. This is particularly so when the petitioner alleges malice in fact in which event it is obligatory for the person making any such allegation to furnish particulars that would prove malafide on the part of the decision maker. Vague and general allegations unsupported by the requisite particulars do not provide a sound basis for the court to conduct an inquiry into their veracity. The legal position in this regard is fairly well-settled by a long line of decision of this Court”.*

10.14. The Petitioner has impleaded Respondent No. 5, probably in order to divert the attention from the fact that the Petitioner had carried out unauthorized construction, which is demolished by MCGM.

10.15. The Petitioner is not entitled to any relief against Respondent No. 5 in

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29 (2013) 1 SCC 524

the absence of pleadings against Respondent No. 5 and the above Writ Petition deserves to be dismissed with heavy compensatory costs.

10.16. As set out earlier, Respondent No. 5 has not dealt with the additional documents tendered in Court by the Petitioner at the instance of this Court and since the same were not dealt with in the written submissions of Respondent No. 5 dated 5<sup>th</sup> October, 2020, this Court informed the same to the Advocate for Respondent No. 5 and gave an opportunity to file further written submissions to Respondent No. 5 with regard to the same. Thereupon, the Advocate for Respondent No. 5 filed additional written submissions on behalf of Respondent No. 5 dated 30<sup>th</sup> October, 2020, wherein it is submitted as follows :

- i. The tweets made by Petitioner do not form a part of the pleadings in the Writ Petition and Respondent No. 5 has not made any tweets against the Petitioner.
- ii. The news report published in the newspaper daily 'Saamna' on 5<sup>th</sup> September, 2020, states that the Maharashtra Home Minister has stated that if the Petitioner does not feel safe in Mumbai, she has no right to stay in Maharashtra. The said news report is also not part of the pleadings in the Writ Petition and hence this Court may not take any cognizance of the same.

**11. The Scheme of Section 351 and Section 354A of the Mumbai Municipal Corporation Act, 1888.**

11.1. The Petitioner has submitted that assuming (though denying) that the works carried out by the Petitioner were unauthorized, since every work set out /

listed in the impugned Notice was completed and therefore existing / in-existence prior to the inspection and issuance of the impugned Notice, MCGM was required to give 7 days time, as well as a personal hearing to the Petitioner to enable her to take action as permissible in law, including seeking regularization of such internal works under Section 53 (3) of the MRTP Act, 1966. As against this, MCGM has submitted that the alleged unauthorized works were ‘ongoing’ and therefore only 24 hours’ notice was required to be issued and due to this they issued notice to the Petitioner under Section 354A of the Act. For better appreciation of the facts in the present case narrated hereinabove, as also the above submissions / claims of the Petitioner and MCGM respectively, before we proceed to examine whether the alleged unauthorized works were ‘Existing works’ or ‘Ongoing works’, as well as the conduct of the Respondents, we deem it necessary at the outset, to explain hereunder the Scheme of Section 351 and Section 354A of the Act :

11.2.           **Section 342** of the Act makes it mandatory for every person who intends to make any additions to a building, or change its existing user, or make any alterations or repairs to a building involving removal, alteration or re-erection of any part of the building, except tenantable repairs, to give notice to the Commissioner in a form prescribed under Section 344, and after the Commissioner signifies in writing his approval for the work or fails to intimate in writing his disapproval of it, as provided under Section 345, can such work be carried out. Only after such approval or failure to intimate disapproval, the work can be commenced at any time within one year and

with a notice of not more than seven clear days to the Municipal City Engineer of the proposed date of commencement as required by Section 347 of the Act. Section 342 has a proviso which prevents any work of lowering of plinth, foundation or floor in a building under the scheme of these provisions.

11.3. There are two remedial provisions in the MMC Act, in addition to the provisions under the MRTP Act, which authorize the Commissioner to act when work described in Section 342 is unlawfully commenced or carried on by any person. These are Section 351 and Section 354A of the Act.

Under **Section 351**, if execution of any work as is described in Section 342 is commenced contrary to the provisions of Section 342 or 347, the Commissioner is required to serve a written notice requiring the person executing such work, to show within seven days of service of the written notice, sufficient cause why such work should not be removed, altered or pulled down. The Commissioner has an option to require such person, either personally or by an authorized agent, to attend and show such cause. Upon failure of such person to show sufficient cause, the Commissioner is empowered to remove, alter or pull down the work.

**Section 354A**, on the other hand, empowers the Commissioner to stop any work described in Section 342, if he is satisfied that such work has been unlawfully commenced or is being unlawfully carried on upon any premises. If it is not so stopped or permission for its execution is not produced within twenty-four hours from service

of such stop-work notice, the Commissioner has the power, under sub-section (2) of Section 354A, to remove or pull down such work without further notice.

11.4. Though there is some apparent overlap between the provisions of Sections 351 and 354A, since both use the phrase “any such work is.... commenced” as the starting point for any action to be initiated thereunder, there is an obvious difference between the two. Such difference has also been judicially noticed. Before we turn to the judicial pronouncements on the subject, we may formulate these differences simply from the language employed in the two Sections and their context.

These are as follows:

- (i) **Section 351** contemplates a Show Cause Notice when execution of any work described in Section 342 is commenced contrary to the provisions of Section 342 or 347, that is to say,
  - (a) Without notice to the Commissioner, or
  - (b) Without approval or want of intimation of disapproval from the Commissioner within thirty days of such notice, or
  - (c) After one year from the date of delivery of such notice, or
  - (d) Without notice of the proposed date of commencement for such work to the city engineer, or
  - (e) After seven days of notice of intimation to the city engineer of the proposed date of commencement.
  
- (ii) **Section 354A**, on the other hand contemplates a stop-

work notice upon unlawful commencement or carrying on of any work described in Section 342. Though both the Sections refer to commencement of the offending work, by its very nature, Section 354A refers to on-going work, whereas Section 351 refers to completed (whether fully or partially) work, which is proposed to be removed, altered or pulled down, if no sufficient cause is shown.

The Show Cause Notice to be given under Section 351, is for work commenced contrary to the provisions of Sections 342 or 347. Unlike in the case of Section 354A, under Section 351 there is no requirement of the Commissioner's satisfaction about the commencement being unlawful. This is but natural, since Section 351 contemplates a show cause notice and the satisfaction of the Commissioner can come only after such cause is shown, whereas Section 354A contemplates the initial action of stoppage of work, which is a direct interference with the work, to be preceded by the Commissioner's satisfaction. In other words, whereas a mere reason to believe is sufficient to warrant a notice under Section 351, for any notice under Section 354A, there must be satisfaction of breach of law.

- (iii) Under Section 354A, the Commissioner is empowered to act (under sub-section 2) by removing or pulling down the work, if the work is not stopped, or permission approved by the competent authority for execution of such work is not produced within twenty-four hours. In

other words, if the person executing the work stops the work, or in the alternative produces authorization for the work, the Commissioner cannot proceed to remove or pull down the work.

11.5. This scheme of Sections 351 and 354A has been explained in various judicial pronouncements. The leading authority on this subject is the Judgement of the Supreme Court in *Muni Suvrat Swami Jain v/s. Arun Gaikwad* (supra), where, whilst noticing the difference between Sections 351 and 354A of the Act, the Court observed as follows:

*“53.) It is seen that no notice under the provisions of Section 351 has been issued by the Municipal Commissioner in this matter against the appellant. In the special leave petition, it is clearly mentioned by the appellant that the Corporation had issued a notice to stop the work under Section 354A of the BMC Act. No reference is made to any notice under Section 351 of the Act. It is specifically mentioned that the affidavit which was filed on behalf of the Corporation had categorically stated that after the service of stop-work notice under Section 354A no work was carried out. Respondent 1 is fully aware that the provisions of Section 354A of the Act deals with stop-work notice whereas the provisions of Section 351 of the Act deals with show-cause notice for demolition of unauthorized structure. The grievance of the appellant herein has been that without issuing a notice under Section 351 of the Act and without giving an opportunity to the appellant of being heard the structure of the temple could not be ordered to be demolished by the*

*High Court. The power under Section 351 of the Act, in our opinion, has to be exercised only by the Municipal Commissioner and it is left to the Municipal Commissioner under the provisions of Section 351 (2) either to order or not to order the demolition of alleged unauthorized temple. In fact, Respondent 1 by himself through his advocate's letter dated 16-4-2005 (annexed to his counter-affidavit) requested the municipal authorities to take action under Section 351 of the Act. At the time of admission of this special leave petition, the provisions of Section 351 of the Act was pointed out by the learned Senior Counsel to show that the Municipal Commissioner had only been conferred the power under the said provisions to demolish or not to demolish unauthorized structure and, therefore, the High Court ought not to have issued mandamus for demolition of the temple before any order was passed by the Commissioner on the question of demolition. The provisions of Section 354A have nothing to do with the question of demolition."*

*(emphasis supplied)*

11.6. In *Abdul Razzaq Sunesra v/s. MCGM* (supra), after referring to Sections 351 and 354A, this Court observed the distinction in the following words:

*"9.) This provision, as noted in the judgement of the Supreme Court in Muni Suvrat-Swami Jain S.M.P Sangh v. Arun Nathuram Gaikwad, 2007 (2) Mh.L.J. (S.C.) 8 : (2006) 8 SCC 590 Paragraph 57 on pages 611 and 612 confers an enabling power on the Commissioner and a discretion if sufficient cause is not shown, whether or not to demolish the unauthorized construction. Similarly, under Section 354A, if the designated officer is satisfied that the*

*erection of a building or execution of a work has been unlawfully commenced or is being unlawfully carried on, he may issue a notice to stop such erection of work forthwith...”*

*“10.) Sub-section (2) of Section 354A deals with a situation where the erection of a building or execution of a work is not stopped upon receipt of a notice or where the person to whom the notice is addressed does not produce the approval of the competent authority within 24 hours. In such case, the designated officer is authorized, without further notice, to remove or pull down the building or the work. Section 354A evidently applies to emergent situations where the designated officer considers it necessary to stop work which has been unlawfully commenced or work which has been unlawfully carried out despite issuance of a stop work notice.”*

**12. The authorities quoted above, make the following position clear :**

- i. Section 354A primarily deals with a stop work notice, whereas Section 351 deals with a show cause notice for demolition of an unauthorized structure;
- ii. Section 354A applies to ongoing work; it applies to emergent situations where the designated officer considers it necessary to stop such ongoing work which has been unlawfully commenced, or which is being unlawfully carried out despite issuance of a stop work notice.
- iii. For any unauthorized work already carried out, the Commissioner must resort to his power under Section 351 and not under Section 354A.

**13. Guidelines laid down by MCGM in its Circular dated 15<sup>th</sup> March, 2012 and relied upon by MCGM itself in the present matter :**

13.1. The MCGM, perhaps keeping in mind the aforesaid apparent overlap between the provisions of Sections 351 and 354A of the Act, in supersession of its earlier instructions, has laid down guidelines for the guidance of its staff in its Circular dated 15<sup>th</sup> March, 2012. These guidelines provide for procedure to be followed for actions to be taken under Sections 354A and 351. At the very outset, the guidelines distinguish between two different situations :

**Part A**, deals with action under Section 354A and contains the procedure to be followed “*for on-going unauthorized construction*”, whilst

**Part B**, deals with Section 351, and contains the procedure to be followed “*for existing unauthorized construction*”.

**Part A** provides for a situation where “**any unauthorized construction is in progress contrary to the provisions of Sections 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.**” (Emphasis supplied). The concerned officer detecting such work has then to take photographs showing the date and status of the work and prepare a Panchnama / Inspection Report “of the work in progress”. He then has to make an entry to that effect in the Detection Register and then prepare a notice under **Section 354A** of the Act.

13.2. On the other hand, for existing unauthorized construction, the staff of MCGM is mandated to proceed under Section 351, requiring the owner / occupier of

unauthorized construction to show within 7 days' time, that the work complained of is "carried out in accordance with the provisions of Sections 337, 342 and Section 347 of the MMC Act".

13.3. The Circular of 15<sup>th</sup> March, 2012, thus, makes it very clear when and how, consistent with the purpose of Section 354A discussed above, the MCGM's staff should resort to a notice under Section 354A.

**14. Whether the 'unauthorized works' carried out by the Petitioner were completed and therefore 'Existing' on the date of issue of the impugned Notice, or as alleged by the MCGM were "in progress", justifying the issuance of notice to the Petitioner under Section 354A of the Act ?**

14.1. The Petitioner approached this Court in the morning of 9<sup>th</sup> September, 2020, with the present Writ Petition, which was prepared in immense haste and in the absence of the Petitioner in Mumbai. However, in this Writ Petition itself it was averred on behalf of the Petitioner as follows :

*"...Respondent No. 2 (MCGM) has purported that the Petitioner is carrying out work in the Suit premises, whereas in reality no work is being carried out."*

*"...the conclusion arrived at in the impugned notice that the Petitioner has carried out unauthorized development or is carrying out an unlawful erection or building is perverse and based upon improper and prejudicial surmises."*

14.2. In the amended Writ Petition, the Petitioner has interalia categorically

stated that :

- i. *“In January, 2020, the interior designing of the said bungalow was fully completed by one design and architect consultancy firm called The Orange Lane LLP (“said Firm”). The Petitioner spent considerable monies towards renovating the said bungalow to ensure that she could conveniently work therefrom. The decor of the said bungalow received much appreciation from all and was widely publicized.” (emphasis supplied)*
- ii. *“The Petitioner’s said bungalow also featured in a leading interior décor magazine called Elle Decor in their April-May 2020 Issue where she opened up about the interiors of her new work place.”*
- iii. *“The Petitioner also conducted a Makarsankranti puja ceremony at the said bungalow in the month of January, 2020 after the works and renovation was “fully completed”. This puja also received wide publicity and was reported in various online articles.” (emphasis supplied)*
- iv. *“It is evident from the pooja photographs and magazine photographs that there was no erection of work or unlawful commencement / carrying on of work being carried out by the Petitioner. Furthermore, the photographs in the magazine Elle Decor edition of April- May 2020, which was published way before the Impugned Notice was issued by the Respondent No.1, demonstrates that the said Premises was fully completed in terms of all works and there was no further requirement by the Petitioner to carry out work therein.” (emphasis applied)*

v. *“The photographs annexed to the impugned notice is mere photo of one person, who was trying to control / prevent the leakage which had taken place, by doing waterproofing as stated above. The cause of leakage was incessant rains that had happened during the course of monsoon in Mumbai. It is also pertinent that while, the MCGM has listed out 14 alleged works ongoing in the said bungalow at Item 7 which were allegedly said to be ‘commenced/unlawfully carried on’, there is only one photo of 1 person annexed to the Impugned Notice which is just the photo of person trying to prevent leakage from the monsoon rains.”*

14.3. The Petitioner has in her amended Writ Petition also relied on certain articles and photographs, interalia pertaining to the inauguration of her renovated Bungalow by performing a puja on 15<sup>th</sup> January, 2020, i.e. on the occasion of Makarsankranti, which appeared on the Quint and Filmfare websites, both dated 15<sup>th</sup> January, 2020 and on the Hindustan Times website dated 26<sup>th</sup> May, 2020. The Petitioner has also relied on the April-May 2020 Issue of the Elle Decor Magazine which contains a number of photographs of the different rooms/areas of her lavishly renovated and furnished Bungalow alongwith her interview, as well as the interview of the Interior Designer with details of almost every piece of furniture placed in the Bungalow, the upholstery used, carpets laid, lights fitted, sheers put up and the floorings, including the source from where they are procured.

14.4. Since the MCGM has, in its impugned Notice dated 7<sup>th</sup> September,

2020, issued to the Petitioner under Section 354A of the Act, given only 24 hours to the Petitioner to respond to the same, by alleging that the renovation and the finishing works to the unauthorized portions of the said Bungalow is ‘**ongoing**’ and has purported to set out the same at Items ‘a’ to ‘n’ of the impugned Notice, we first proceed to examine item-wise whether any such work was ‘ongoing’ on 7<sup>th</sup> September, 2020, as alleged by the MCGM, or that the unauthorized works’ set out in the said items were ‘existing / completed works’ on 7<sup>th</sup> September, 2020, as claimed by the Petitioner, for which the MCGM was bound to give seven days notice and also an opportunity of a personal hearing, before carrying out any demolition of the alleged unauthorized works.

14.5. Items ‘a’ to ‘d’ in the impugned Notice pertain to portions of the premises on the ground floor of the said Bungalow. We first propose to deal with Item ‘d’ and will thereafter proceed to deal with Items ‘a’ to ‘c’ and then Item ‘e’ onwards.

14.6. Item ‘d’ in the impugned Notice dated 7<sup>th</sup> September, 2020 reads thus :

***“d) Unauthorised Pantry is constructed on ground floor.”***

- i. The following photograph of the Pantry on the ground floor complete in all respects appeared in the April-May 2020 Issue of the Elle Decor Magazine :



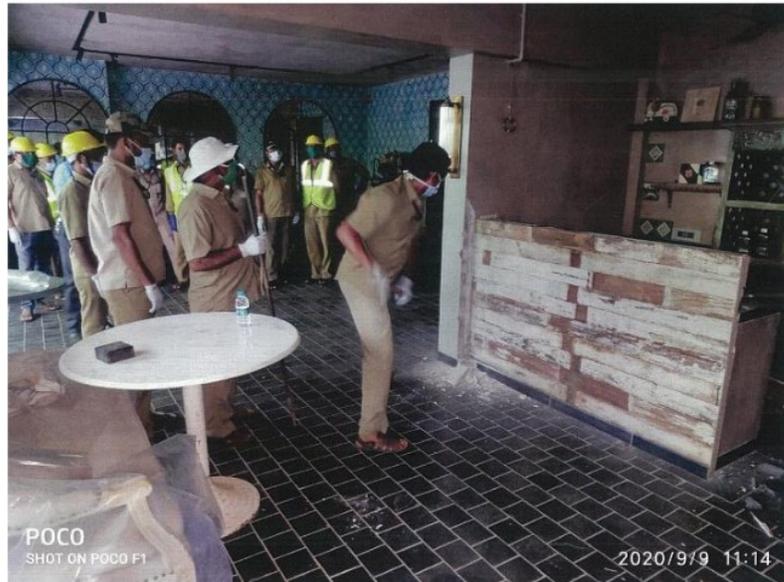
- ii. The said Pantry on the ground floor of the said Bungalow was complete in all respects and ready for use on the date of publication of the above photograph, as is clear from the description given on the right side of the above photograph. The said description is reproduced hereunder for convenient reading :

*“FROM TOP The ground floor cafe, near the spiral stairway, reuses reclaimed wood. On the wall behind it are green handmade tiles sourced from Rajasthan. The coffee machine is from Smeg; Shabnam Gupta of The Orange Lane fame designed the facade from scratch. It features French openable windows and moulded design in outdoor dalmia. Metal troughs featuring greens by Tooth Mountain Nursery are seen above the customised crystal glass light at the gate; The alfresco end of the*

*cafeteria is levelled with brick patterned kadappa flooring from Bhartiya Marble. Against the landscape created by Tooth Mountain Nursery, bespoke furniture cushions and artefacts from Peacock Life are assembled around a cantilevered civil bench made with handmade tiles that are sourced from Rajasthan.”*

iii. In the handwritten inspection report prepared by Shri Late, Designated Officer of the MCGM on 7<sup>th</sup> September, 2020, it is recorded that, ***“At first & second floor, internal renovation, finishing work is found in progress. Position of entrance gate at ground floor is changed”***, thereby making it clear that there was no ongoing finishing / renovation work being carried on, on the entire ground floor as alleged. Despite this, the above Pantry is mentioned as Item ‘d’ in the Schedule to the impugned Notice issued under Section 354A of the Act, and contrary to the above recording in the handwritten inspection report prepared at site by the same Shri Late, it is now wrongly alleged in the impugned Notice dated 7<sup>th</sup> September, 2020, issued under Section 354A of the Act that, ***“(27)....Unauthorized construction, addition, alteration and amalgamation work is in progress at G+2 Bungalow no. 5 without any permission from competent authority.”*** Needless to add that the MCGM has also not produced a single photograph showing any work being carried out by any person / workman on any portion on the ground floor, or atleast in respect of the said Pantry. However, MCGM after pasting the impugned Notice on the outer wall of the said Bungalow on 8<sup>th</sup> September, 2020 at 10.03 a.m. and before pasting the Order of

demolition at 10.35 a.m. on 9<sup>th</sup> September, 2020 on the outer wall of the said Bungalow, had already made arrangements to carry out the demolition work and the Pantry was completely demolished by the time the Court commenced the hearing of the ad-interim application at 12.30 p.m. on 9<sup>th</sup> September, 2020, and before the Advocate for the MCGM conveyed the Order of this Court to forthwith stop demolition. The photographs of the demolition of the Pantry on the ground floor of the said Bungalow being carried out and completed, are shown hereunder :



14.7. Item 'a' in the impugned Notice dated 7<sup>th</sup> September, 2020 reads thus :

***“a) Toilet unauthorizably converted into office cabin on ground floor”.***

i. The photograph produced by the MCGM showing the work set out in Item 'a' of the impugned Notice as on 7<sup>th</sup> September, 2020 is reproduced hereunder :



ii. The above photograph taken by the MCGM on 7<sup>th</sup> September, 2020 shows that the work is complete in all respects. The table, chairs, telephone, files, air conditioner, cctv camera in the said Office Cabin on the ground floor shows that the same is in fact in use.

iii. MCGM has neither set out any details nor have they produced any photograph of any ongoing work/s in the ground floor premises described in Item 'a' of the impugned Notice.

iv. In fact, the handwritten 'Inspection Report' dated 7th September, 2020,

which was prepared by Shri Late and other officers of the MCGM at the said Bungalow and produced before this Court on 10<sup>th</sup> September, 2020, does not record that any renovation / finishing work was ongoing on the ground floor. It is only alleged in the Report that, ***“At first & second floor, internal renovation, finishing work is found in progress. Position of the entrance gate at ground floor is changed.”***

v. However, in view of the ad-interim Order passed by this Court on 9<sup>th</sup> September, 2020, the premises described in Item ‘a’ of the impugned Notice has not been demolished.

14.8. Item ‘b’ in the impugned Notice dated 7<sup>th</sup> September, 2020 reads thus :

***“b) Unauthorized kitchen is constructed in store room on ground floor”.***

i. The photograph produced by the MCGM showing the work set out in Item ‘b’ of the impugned Notice as on 7<sup>th</sup> September, 2020 is reproduced hereunder :



i. The above photograph taken by the MCGM on 7<sup>th</sup> September, 2020 shows that the work is complete in all respects. The gas cylinder, the dust bin, the vessels on the kitchen platform, the refrigerator, the fire extinguisher etc., in the kitchen shows that the same is in fact in use.

iii. MCGM has neither set out any details nor have they produced any photograph of any ongoing work/s in the ground floor premises described in Item 'b' of the impugned Notice.

iv. In fact, in the handwritten 'Inspection Report' dated 7<sup>th</sup> September, 2020 which was prepared by Shri Late and the officers of the MCGM at the said Bungalow and produced before this Court on 10<sup>th</sup> September, 2020, the same does not record that any renovation / finishing work was ongoing on the ground floor. It is only alleged in the Report that, ***“At first and second floor, internal renovation, finishing work is found in progress. Position of the entrance gate is found changed.”***

v. MCGM therefore ought not to have included the 'unauthorized' kitchen on the ground floor as Item 'b' in its impugned Notice.

vi. However, in view of the ad-interim Order passed by this Court dated 9<sup>th</sup> September, 2020, except for demolition of the entrance door to the kitchen described in Item 'b' of the impugned Notice, nothing else has been demolished.

14.9. Item 'c' in the impugned Notice dated 7<sup>th</sup> September, 2020 reads thus :

***“c) New toilets are unauthorizedly constructed beside staircase inside store and another in parking area on ground floor.”***

i. From a plain reading of Item 'c' hereinabove, it is clear that two toilets are included in Item 'c', i.e. one besides the staircase inside the store and another in the parking area on the ground floor. Under the Circular dated 15<sup>th</sup> March, 2012, relied upon by the MCGM itself, MCGM is bound to take photographs of the ongoing works. This is so because the onus is on MCGM to show / establish that the 'unauthorized' work is going on. MCGM has produced one photograph, that too the side view of the toilet besides the staircase inside the store on the ground floor. In view thereof the only photograph produced by the MCGM is reproduced hereunder :



ii. MCGM has neither set out any details nor have they produced any photograph of any ongoing work/s in the ground floor premises described in Item 'c' of the impugned Notice.

iii. In fact, the handwritten 'Inspection Report' dated 7th September, 2020 which was prepared by Shri Late and the officers of the MCGM at the said Bungalow and produced before this Court on 10<sup>th</sup> September, 2020, the same does not record that any renovation / finishing work was ongoing on the ground floor. It is only alleged in the Report that, ***“At first & second floor, internal renovation, finishing work is found in progress. Position of the entrance gate at ground floor is changed.”***

iv. However, in view of the ad-interim Order passed by this Court dated 9<sup>th</sup> September, 2020, the premises described in Item 'c' of the impugned Notice has not been demolished.

14.10. Item 'e' in the impugned Notice dated 7<sup>th</sup> September, 2020 reads thus :

***“e) Unauthorized room / cabin with wooden partition made in living room on first floor.”***

i. The following photograph of the living room on the 1<sup>st</sup> floor is reproduced from the April-May 2020 Issue of the Elle Decor Magazine :



ii. The detailed description of the completed and fully furnished living room in the Elle Decor Magazine (April-May 2020 Issue) is found on the left side of the above photograph and the said description is reproduced hereunder for convenient reading :

*“Class black and white patterned flooring from Lorenzo leads to the panelled wooden door of the editing suite on the first floor. The suite is acoustically treated, and like the other spaces of the studio, are painted using Asian Paints. The light fixture on the right of Kangana is from Chor Bazaar. Kangana’s wearing a dress by Bodice, and earrings by Lune”.*

iii. The following photograph of the discussion room on the first floor,

which is adjacent but independent of the living room (i.e. not interconnected), is reproduced from the April-May 2020 Issue of the Elle Decor Magazine :

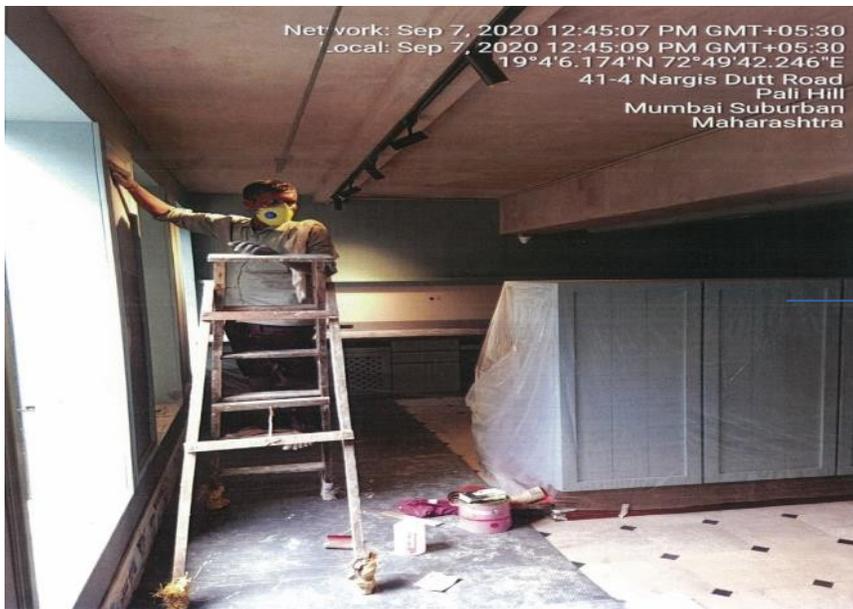


iv. The detailed description of the completed and fully furnished discussion room in the Elle Decor Magazine (April-May 2020 Issue) is found on the same page of the said Magazine and is reproduced hereunder for convenient reading :

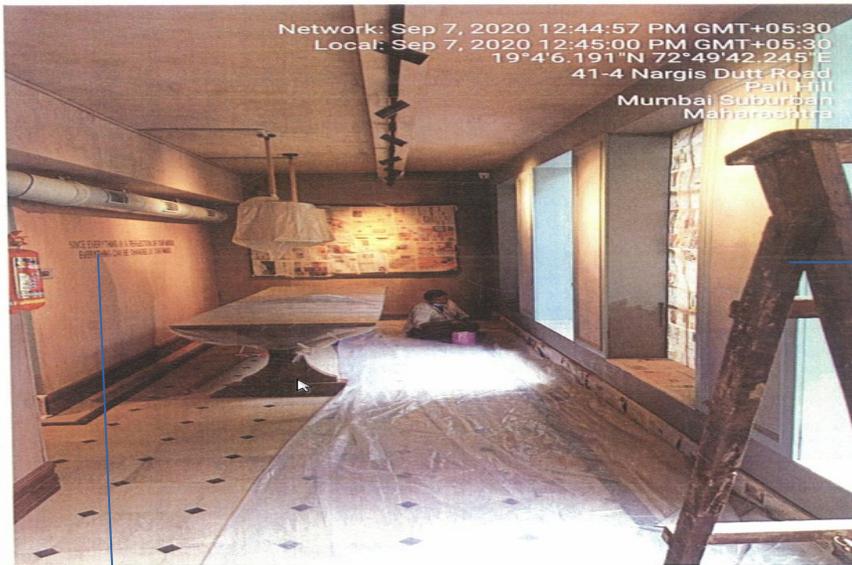
*“FROM TOP The discussion area is furnished with pieces from Peacock Life, upholstery from A to Z Furnishing and Cona Lights fixtures ; ...”.*

v. Admittedly, the south side wall / wooden partition between the living room and the discussion room on the first floor is common. However, no work was going on in the living room on 5<sup>th</sup> / 7<sup>th</sup> September, 2020 and no workman was found in the said room which is independent of the discussion room. MCGM have not

produced any photograph of any work being carried out in the living room or showing any workmen present in the living room. From the photographs produced by MCGM, on 5<sup>th</sup> / 7<sup>th</sup> September, 2020, the workman (described as Workman No. 1 by MCGM) was carrying out some work on a ladder in the discussion room and next to him a box of paint / polish and some pieces of cloth can be seen. In the same discussion room, another workman (described as Workman No. 2 by MCGM) is seen sitting on the floor with a box of paint / polish but he does not appear to be doing any work. The Petitioner has explained in her Affidavit that the said Workman No. 2 was a helper to the Workman No. 1 - who is seen on the ladder. The photographs produced / relied on by the MCGM are reproduced hereunder :



Workman No. 1  
according to  
MCGM.



Workman No. 2  
according to  
MCGM.

Common south side wall / wooden partition between the living room and the discussion room.

vi. Despite the living room and the discussion room being completed in all respects, MCGM by alleging that two persons / workmen were carrying out work in the discussion room, have included the living room as well as the discussion room in the impugned Notice by describing the same as “e) *Unauthorized room / cabin with wooden partition made in living room on first floor*”. Despite being independent of each other **and fully completed and furnished atleast since April-May 2020**, MCGM after pasting the impugned Notice on the outer wall of the said Bungalow on 8<sup>th</sup> September, 2020 at 10.03 a.m., and before pasting the Order of demolition on 9<sup>th</sup> September, 2020 on the outer wall of the said bungalow had already made arrangements to carry out the demolition work, and the two rooms i.e. the living room as well as the discussion room were completely demolished by the time the Court

commenced the ad-interim application at 12.30 p.m. on 9<sup>th</sup> September, 2020, and before the Advocate for the MCGM conveyed the Order of this Court to forthwith stop demolition. The photographs of the front view as well as the front side view of the demolished living room and the discussion room are reproduced hereunder:



Front view

09-Sep-2020 12:27:09 pm  
107-B Nargis Dutt Road  
Pali Hill  
Mumbai Suburban  
Maharashtra



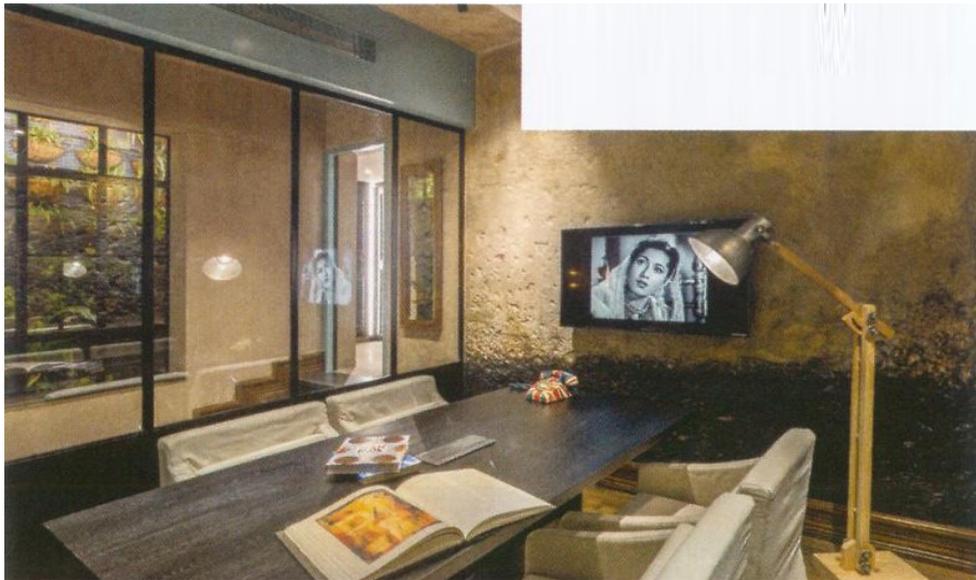
Front and side view

09-Sep-2020 12:27:50 pm  
41-6 Nargis Dutt Road  
Pali Hill  
Mumbai Suburban  
Maharashtra

14.11. Item 'f' in the impugned notice dated 7<sup>th</sup> September, 2020 reads thus :

***“f) Unauthorized meeting room / cabin with wooden partition made in pooja room on first floor.”***

i. The following photograph of the conference room on the first floor is reproduced from April-May 2020 Issue of the Elle Decor Magazine :



ii. The detailed description of the completed and fully furnished conference room in the Elle Decor Magazine (April-May 2020 Issue) is found on the same page of the said Magazine and is reproduced hereunder for convenient reading :

*“.... The conference room is enclosed with a metal and glass partition and overlooks greens. Creating a grunge effect is the textured wall, solid wood table, floor lamp and custom seaters from Peacock Life.”*

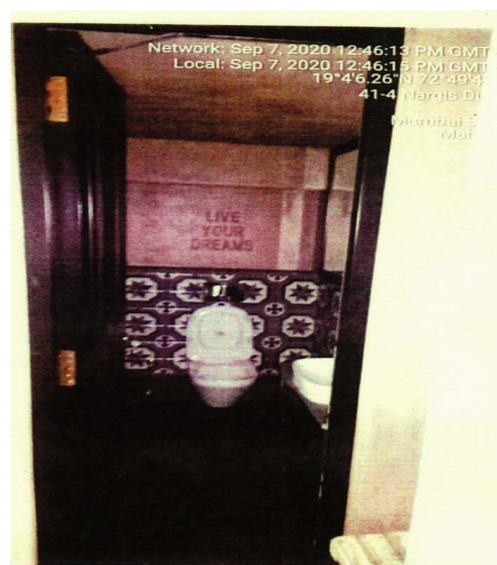
iii. From the above photograph and its description, it leaves no doubt that the conference room is complete in all respects since April-May 2020. No photograph

showing any ongoing work in the conference room on 5<sup>th</sup> / 7<sup>th</sup> September, 2020 is produced by MCGM. Admittedly, no workman was found in the said conference room. Even then, the MCGM has included the said conference room in its impugned Notice dated 7<sup>th</sup> September, 2020 issued under Section 354A of the Act as Item ‘f’, and were wanting to demolish the same on 9<sup>th</sup> September, 2020. However, due to the ad-interim Order passed by this Court on 9<sup>th</sup> September, 2020, the said conference room is not demolished till date.

14.12. Item ‘g’ in the impugned notice dated 7<sup>th</sup> September, 2020 reads thus :

***“g) Unauthorized construction of toilets in open chowk area with brick masonry walls and slab on first floor.”***

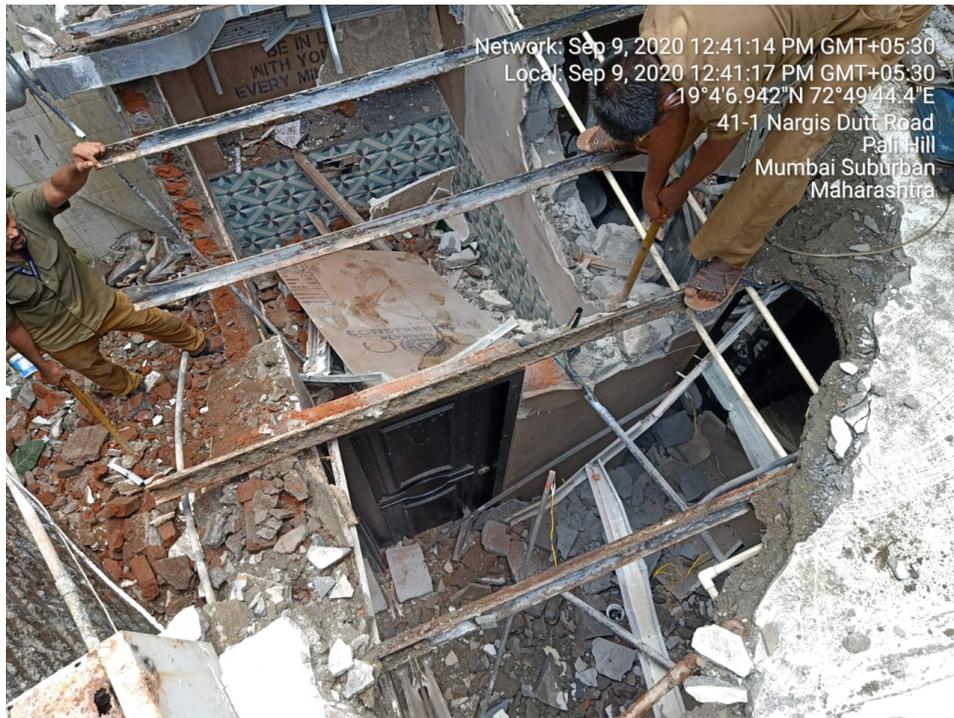
i. From the plain reading of Item ‘g’ hereinabove, it is clear that two toilets are included in Item ‘g’. The photographs produced by the MCGM showing the work set out in Item ‘g’ of the impugned Notice as on 7<sup>th</sup> September, 2020 are reproduced hereunder :



ii. The above photographs taken by the MCGM on 7<sup>th</sup> September, 2020, show that the work is complete in all respects.

iii. MCGM has not produced any photograph showing any ongoing works in either of the two toilets.

iv. The photographs of the toilets being demolished by the MCGM is reproduced hereunder :





14.13. Items ‘h’ and ‘k’ in the impugned Notice dated 7<sup>th</sup> September, 2020 read thus :

*“h) Unauthorized horizontal extension of slab at front side admeasuring 2’6” on first floor.*

*k) Unauthorized horizontal extension of slab at front side admeasuring 3’ on second floor.”*

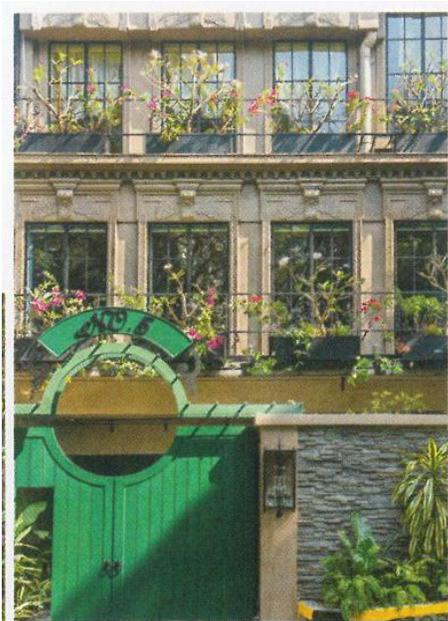
i. The photograph of the outer facade of the said Bungalow which includes the horizontal slabs on the 1<sup>st</sup> and 2<sup>nd</sup> floors of the said Bungalow (used for enhancing the outer facade of the said Bungalow with flower plants / pots) first appeared on the Quint Website on 15<sup>th</sup> January, 2020. The same is reproduced hereunder :



ii. The same photographs of the outer facade of the said Bungalow alongwith the same horizontal slabs on the 1<sup>st</sup> and 2<sup>nd</sup> floors of the said Bungalow

appeared 4 – 5 months thereafter in the Issue of **April-May 2020** of Elle Decor Magazine and the Hindustan Times Website on **26<sup>th</sup> May, 2020**.

Elle Decor Magazine  
April-May 2020 Issue



Hindustan Times Website  
as on 26<sup>th</sup> May, 2020



iii. From the above photographs, it is established that the said horizontal slabs on the 1<sup>st</sup> and 2<sup>nd</sup> floors of the outer facade of the said Bungalow are in existence since atleast 15<sup>th</sup> January, 2020. Yet the said horizontal slabs are set out as Items ‘h’ and ‘k’ in the Schedule to the impugned Notice. MCGM has not produced a single photograph showing any work being carried out by any person / workman on any portion of the outer facade of the said Bungalow or atleast in respect of the areas where the horizontal slabs are constructed. However, MCGM after pasting the

impugned Notice on the outer wall of the said Bungalow on 8<sup>th</sup> September, 2020 at 10.03 a.m., and before pasting the Order of demolition at 10.35 a.m. on 9<sup>th</sup> September, 2020, on the outer wall of the said Bungalow had already made arrangements to carry out the demolition work including bringing a JCB at site, and the horizontal slab on the 1<sup>st</sup> floor was demolished by the time the Court commenced hearing of the ad-interim Application at 12.30 p.m. on 9<sup>th</sup> September, 2020, and before the Advocate for the MCGM conveyed the Order of this Court to forthwith stop demolition. The photographs of the demolition being carried out and completed in respect of the horizontal slab on the outer facade of the 1<sup>st</sup> floor of the said Bungalow are shown hereunder :



During  
demolition



iv. The MCGM could not carry out demolition of the horizontal slab seen on the outer facade on the second floor due to the ad-interim Order passed by this Court dated 9<sup>th</sup> September, 2020.

14.14. Item 'i' in the impugned Notice dated 7<sup>th</sup> September, 2020 reads thus :

***“i) Staircase orientation is changed on second floor”.***

i. The photograph of the stairway (referred to as staircase orientation by the MCGM) on the 1<sup>st</sup> floor featured in the April-May 2020 Issue Elle Decor Magazine showing the work set out in Item 'i' of the impugned Notice dated 7<sup>th</sup> September, 2020, is reproduced hereunder :



- ii. The detailed description of the fully completed staircase given on the top right corner of the above photograph is reproduced hereunder :

*“A metal and glass grid partition opens out to the stairway, which is finished in black stone and brass inlay with a wooden handrail for the balustrades. The dalmia finished walls are subdued to draw attention to the vertical garden created by Tooth Mountain Nursery at the back of the building.”*

- iii. Admittedly, there was no ongoing work, nor there was presence of any workman found near the stairway on 5<sup>th</sup> / 7<sup>th</sup> September, 2020. The MCGM has not

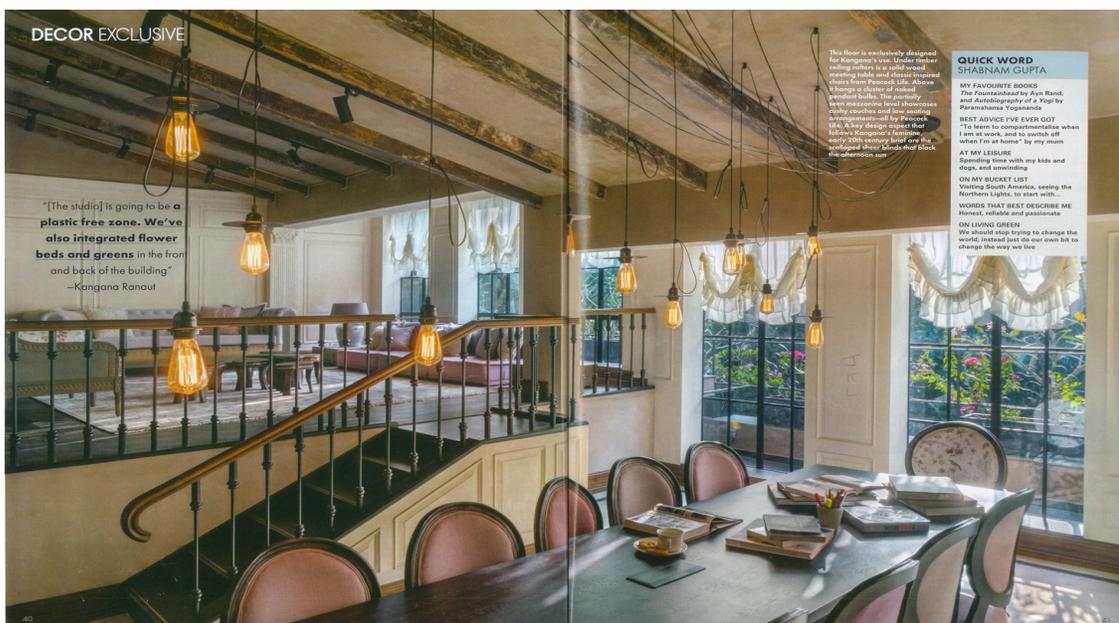
produced any photograph of the changed staircase orientation or any workman carrying out any work thereon. Despite that, the MCGM also included the said stairway, in its impugned Notice as “*Item i) Staircase orientation is changed on second floor*”, which they wanted to demolish on 9<sup>th</sup> September, 2020. However, due to the ad-interim Order passed by this Court, the said stairway has not been demolished.

14.15. Items ‘j’ and ‘l’ in the impugned Notice dated 7<sup>th</sup> September, 2020 reads thus :

**“j) Balcony found enclosed in habitable area by removing partition walls on second floor.**

**l) Bedroom of adjoining bungalow no. 4 is merged into bungalow no. 5 by removing partition wall on second floor.”**

i. The following photograph is of the entire second floor, which featured in the April-May 2020 Issue of the Elle Decor Magazine :



ii. The detailed description of the completed and fully furnished second floor in the Elle Decor Magazine (April-May 2020 Issue) is found on the top right corner of the above photograph and the same is reproduced hereunder :

*“This floor is exclusively designed for Kangana’s use. Under timber ceiling rafters is a solid wood meeting table and classic inspired chairs from Peacock Life. Above it hangs a cluster of naked pendant bulbs. The partially seen mezzanine level showcases cushy couches and low seating arrangements – all by Peacock Life. A key design aspect that follows Kangana’s feminine, early 20<sup>th</sup> century brief are the scalloped sheer blinds that block the afternoon sun”.*

iii. The above photograph establishes that the work on the entire second floor is complete in all respects atleast since April-May 2020, including furniture, electrical fittings, sheers and focus lamps. However, the second floor is included by MCGM in Items ‘j’ and ‘l’ of the impugned Notice dated 7<sup>th</sup> September, 2020 issued under Section 354A of the Act. MCGM has alleged that Workman Nos. 3, 4, 5 and a Site Supervisor were found in the said room/s. The photographs relied on by the MCGM are reproduced hereunder :

Photograph : 1



Photograph : 2



According to the MCGM : -

The man in pink shirt in photograph No. 1 is workman No. 3.

The man in red T-shirt in photograph No. 2 is workman No. 4.

The man in grey shirt in photograph No. 1 is the Site Supervisor.

The man shown sitting in photograph No. 2 is workman No. 5

iv. The Workmen who are numbered as 3 and 4 by the MCGM, are admittedly not found doing any work. The Petitioner has informed the Court that the persons shown as Workman No. 3 appears to have accompanied the officers of MCGM and the workman described as Workman No.4 - Shri Shivam Rajil Varma, is the Caretaker of the said Bungalow and the person shown as Workman No. 5 is an electrician named Ishwar, who had come to check the dimmers. It is also submitted that Shri Nikhil Surve supervises the office and is always present in the said Bungalow and in any event, he admittedly is not found to be doing any work in the said Bungalow.

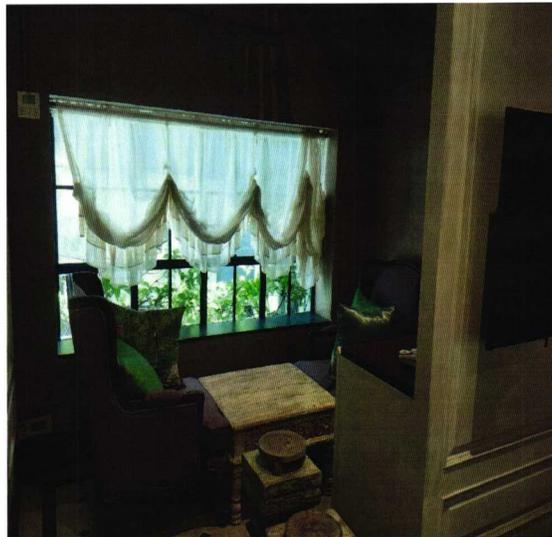
v. The MCGM could not carry out demolition with respect to the second floor due to the ad-interim Order passed by this Court dated 9<sup>th</sup> September, 2020.

14.16. Item 'm' in the impugned Notice dated 7<sup>th</sup> September, 2020 reads thus :

***“m) Toilet of adjoining bedroom (i.e. bungalow no. 4) is found removed and same area is used as habitable area on second floor.”***

i. As regards Item 'm' of the impugned Notice dated 7<sup>th</sup> September, 2020,

the MCGM who is required to take the photographs of all the ‘unauthorized’ works alongwith the date and status of the work at the time of detection of such ‘unauthorized’ works, as per the Circular dated 15<sup>th</sup> March, 2012 relied upon by MCGM, has itself not produced any photograph. The premises described in Item ‘m’ is not demolished due to the ad-interim Order passed by this Court dated 9<sup>th</sup> September, 2020. However, the Petitioner has produced the photograph of the premises described in Item ‘m’ in order to completely belie the allegation made in the notice by Shri Late.



14.17. Item ‘n’ in the impugned Notice dated 7<sup>th</sup> September, 2020 reads thus :

***“n) Position of main entrance gate is found changed.”***

i. As regards Item ‘n’ of the impugned Notice dated 7<sup>th</sup> September, 2020, the MCGM who is required to take the photographs of all the ‘unauthorized’ works alongwith the date and status of the work at the time of detection of such works, as per

the Circular dated 15<sup>th</sup> March, 2012 relied upon by MCGM, has itself not produced any photograph showing any ongoing works in respect to Item 'n'. The premises described in Item 'n' is not demolished due to the ad-interim Order passed by this Court dated 9<sup>th</sup> September, 2020.

14.18. From the facts and photographs reproduced above, we have no doubt and we are sure that Shri Late and the officers of MCGM also had no doubt, that the works described in Items 'a' to 'n' of the Schedule to the impugned notice dated 7<sup>th</sup> September, 2020 were all existing works completed in all respects much prior to the inspection taken on 5<sup>th</sup> / 7<sup>th</sup> September, 2020, and except for one workman who alongwith his helper appears to be carrying out some painting / polishing / waterproofing work in the discussion room on the first floor which discussion room was also complete in all respects atleast by April-May 2020 (photograph at page 66 hereinabove) there was no other work including any renovation and/or finishing work going on in any part of the said bungalow, as alleged by MCGM or otherwise. MCGM therefore could never have issued a notice under Section 354A of the Act giving only 24 hours to the Petitioner to respond to the allegations made therein. Even if the existing / completed works described in Items 'a' to 'n' of the schedule to the impugned notice were unauthorized, the work/s being completed and existing, Shri Late was bound to issue and serve the Petitioner with a notice under Section 351 of the Act giving seven days time to respond, including a personal hearing. Shri Late being aware of the above facts, has consciously not provided the required rough sketch of the

unauthorized works either in the First Inspection Report or in the impugned notice both dated 7<sup>th</sup> September, 2020. Shri Late has also consciously not provided any other photographs of the alleged ongoing unauthorized works to the Petitioner alongwith the impugned notice dated 7<sup>th</sup> September, 2020 and has called upon the Petitioner to comply with the impugned notice, without informing her what according to him / MCGM were the ongoing unauthorized works in the entire bungalow. For the very same reason Shri Late despite having stated in his Affidavit dated 10<sup>th</sup> September, 2020 that he has annexed thereto the photographs taken by him / his team during inspection of the said bungalow on 7<sup>th</sup> September, 2020 has not annexed a single photograph to his Affidavit with a view to delay the production of the same before the Court.

14.19. Shri Late also failed to annex the photographs to his Affidavit dated 17<sup>th</sup> September, 2020 and produced the same only when this Court through its Associate called upon the MCGM to do so. We have also set out hereinafter, how Shri Late belatedly made a statement for the first time in his Affidavit dated 24<sup>th</sup> September, 2020 that the Mukadam too had taken photographs during the inspection of the said bungalow on 5<sup>th</sup> September, 2020 and when this Court called upon Shri Late on 25<sup>th</sup> September, 2020 to produce the camera used by the Mukadam for taking the photographs, on 28<sup>th</sup> September, 2020, Shri Late who had throughout taken a stand that it was only the Mukadam who had visited the said bungalow on 5<sup>th</sup> September, 2020, now through his Counsel retracted the earlier statements made by him on oath

and stated that it was some other officer who had accompanied the Mukadam on 5<sup>th</sup> September, 2020 and who had taken photographs. Besides this, in view of the facts set out hereinabove and the facts which will unfold hereinafter, it will be further established that Shri Late has also made an incorrect statement in his Affidavit dated 17<sup>th</sup> September, 2020 that he found six workmen working in the said bungalow on 7<sup>th</sup> September, 2020.

**15. The much required clarification :**

15.1. Before proceeding further, we make it clear that this Court does not countenance unauthorized construction, and also does not approve of loose and irresponsible statements against any individual, authority or Government. We do not accept as true any of the statements/allegations made by the Petitioner through her tweets with regard to the alleged prevailing atmosphere in the State or the State Police or against the film industry. If anything, we are of the view that the Petitioner should be better advised to exercise restraint when *“as a public spirited person”*, she *“airs her views regarding issues of public importance on social media platforms, ....”*. We must, however, hasten to add that the subject matter of the controversy in the present Petition or, indeed, of the impugned Order of demolition / action on the part of Respondent Nos. 1 to 4, is not the tweets of the Petitioner but action on the part of an arm of the State whilst dealing with a citizen. Irresponsible statements made by a citizen in an individual capacity, however distasteful or wrong they may be, are best ignored. Illegal and colourable action/s on part of the State or its agencies vis-à-vis a

citizen, is far too serious and damaging to society to be overlooked. Whatever be the folly of an individual, whether in the matter of unauthorized construction, or irresponsible statements hurting the sentiments of individuals or the public in general, no action against such individual by anyone, much less by the State, can lie except within the four corners of law. By no means, colourable exercise of power or resort to threats, use of muscle power and/or causing of injury by unlawful means to such person or to his/her property, can be permitted in any civil society. Such actions are the very antithesis of the rule of law.

**16. Malafide conduct: when can it be alleged :**

16.1. As stated hereinabove, it is contended on behalf of the Petitioner that the conduct of the Respondents smack of malafides. In view thereof, before we proceed to set out in detail, the facts which led to the demolition of the said Bungalow, and decide whether the action of demolition of the said Bungalow may be termed as malafide/malicious, we first need to visit the law on the subject:

16.2. As correctly submitted by the Advocates for the parties, malafide means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. An administrative authority must act in a bonafide manner and should never act with improper or ulterior motives, contrary to the requirements of the statute or circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose.

16.3. For malice in fact, the same has to be expressly pleaded, alongwith the allegations in support thereof, and the concerned person also has to be impleaded. There is however an independent concept of malice in law. There cannot possibly be any set guidelines with regard to the proof of malafides. Malafides, wherever alleged, depend upon facts and circumstances of an individual case. The Court must scrutinize the factual spectrum and come to its own conclusion. Malice in law can be inferred from the doing of a wrongful act, without any just cause or excuse, or something done without lawful excuse. It is a deliberate act in disregard to the rights of others, the conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. Malice in law does not even need to be pleaded.

16.4. In *Rajneesh Khajuria v/s. Wockhardt Ltd* (supra) the Supreme Court held as follows:

*“16.) The act of transfer can be unfair labour practice if the transfer is actuated by mala fide. The allegations of mala fides have two facets — one malice in law and the other being malice in fact. The challenge to the transfer is based upon malice in fact as it is an action taken by the employer on account of two officers present in Conference. In a judgment in State of Bihar v. P.P. Sharma [State of Bihar v. P.P. Sharma, 1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] , this Court held that mala fide means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The plea of mala fides involves two questions,*

*namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power. As far as second aspect is concerned, there is a power of transfer vested in the employer in terms of letter of appointment. Even in terms of the provisions of the Act, the transfer by itself cannot be said to be an act of unfair labour practice unless it is actuated by mala fides. Therefore, to sustain a plea of mala fides, there has to be an element of personal bias or an oblique motive. This Court held as under: (SCC pp. 260 & 264-65, paras 50-51 & 59)*

***“50. Mala fides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive or ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fides involves two questions, namely (i) whether there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.***

*(emphasis supplied)*

*51. The action taken must, therefore, be proved to have been made*

*mala fide for such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand.*

*59. Malice in law could be inferred from doing of wrongful act intentionally without any just cause or excuse or without there being reasonable relation to the purpose of the exercise of statutory power. Malice in law is not established from the omission to consider some documents said to be relevant to the accused. Equally reporting the commission of a crime to the Station House Officer, cannot be held to be a colourable exercise of power with bad faith or fraud on power. It may be honest and bona fide exercise of power. There are no grounds made out or shown to us that the first information report was not lodged in good faith. State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] is an authority for the proposition that existence of deep seated political vendetta is not a ground to quash the FIR. Therein despite the attempt by the respondent to prove by affidavit evidence corroborated by documents of the mala fides and even on facts as alleged no offence was committed, this Court declined to go into those allegations and relegated the dispute for investigation. Unhesitatingly, I hold that the findings of the High Court [Prem Prakash Sharma v. State of Bihar, 1990 SCC OnLine Pat 105 : (1990) 2 PLJR 404 (2)] that FIR gets vitiated by the mala fides of the Administrator and the charge-sheets are the results of the mala fides of the informant or*

*investigator, to say the least, is fantastic and obvious gross error of law.”*

*17.) In the matter of Prabodh Sagar v. Punjab SEB [Prabodh Sagar v. Punjab SEB, (2000) 5 SCC 630 : 2000 SCC (L&S) 731], it was held by this Court that the mere use of the expression, “mala fide” would not by itself make the petition entertainable. The Court held as under: (SCC p. 640, para 13)*

*“13. ... Incidentally, be it noted that the expression “mala fide” is not meaningless jargon and it has its proper connotation. Malice or mala fides can only be appreciated from the records of the case in the facts of each case. **There cannot possibly be any set guidelines in regard to the proof of mala fides. Mala fides, where it is alleged, depends upon its own facts and circumstances.... There must be factual support pertaining to the allegations of mala fides, unfortunately there is none. Mere user of the words “mala fide” by the petitioner would not by itself make the petition entertainable. The Court must scan the factual aspect and come to its own conclusion i.e. exactly what the High Court has done and that is the reason why the narration has been noted in this judgment in extenso. ...”***

*(emphasis supplied)*

*18.) In the judgment of HMT Ltd. v. Mudappa [(2007) 9 SCC 768], the Supreme Court, quoting from an earlier Judgment in State of A.P. v. Goverdhanlal Pitti [State of A.P. v. Goverdhanlal Pitti, (2003) 4 SCC 739], held that, “legal malice” or “malice in law” means “something done without lawful excuse”. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill*

*feeling and spite. The Supreme Court in: HMT Ltd. v. Mudappa, (supra), in para 24 held as under:*

*“24. The Court also explained the concept of legal mala fides. By referring to Words and Phrases Legally Defined, 3rd Edn., London Butterworths, 1989 the Court stated: (Goverdhanlal case [State of A.P. v. Goverdhanlal Pitti, (2003) 4 SCC 739] , SCC p. 744, para 12)*

*‘12. The legal meaning of malice is “ill will or spite towards a party and any indirect or improper motive in taking an action”. This is sometimes described as “malice in fact”. “Legal malice” or “malice in law” means “something done without lawful excuse”. In other words, “it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others.”’*

*It was observed that where malice was attributed to the State, it could not be a case of malice in fact, or personal ill will or spite on the part of the State. It could only be malice in law i.e. legal mala fides. The State, if it wishes to acquire land, could exercise its power bona fide for statutory purpose and for none other. It was observed that it was only because of the decree passed in favour of the owner that the proceedings for acquisition were necessary and hence, notification was issued. Such an action could not be held mala fide.”*

*(emphasis supplied)*

*19.) In a judgment in Union of India v. Ashok Kumar [Union of India v. Ashok Kumar, (2005) 8 SCC 760 : 2006 SCC (L&S) 47] , it has been held that allegations of mala fides are often more*

*easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. The Court held as under: (SCC p. 770, para 21)*

*“21. Doubtless, he who seeks to invalidate or nullify any act or order must establish the charge of bad faith, an abuse or a misuse by the authority of its powers. While the indirect motive or purpose, or bad faith or personal ill will is not to be held established except on clear proof thereof, it is obviously difficult to establish the state of a man's mind, for that is what the employee has to establish in this case, though this may sometimes be done. The difficulty is not lessened when one has to establish that a person apparently acting on the legitimate exercise of power has, in fact, been acting mala fide in the sense of pursuing an illegitimate aim. **It is not the law that mala fides in the sense of improper motive should be established only by direct evidence. But it must be discernible from the order impugned or must be shown from the established surrounding factors which preceded the order.** If bad faith would vitiate the order, the same can, in our opinion, be deduced as a reasonable and inescapable inference from proved facts. (S. Pratap Singh v. State of Punjab [S. Pratap Singh v. State of Punjab, (1964) 4 SCR 733 : AIR 1964 SC 72] .) It cannot be overlooked that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility. As noted by this Court in E.P. Royappa v. State of T.N. [E.P. Royappa v. State of T.N., (1974) 4 SCC 3 : 1974 SCC (L&S) 165] courts would be slow to draw dubious inferences from*

*incomplete facts placed before them by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. (See Indian Railway Construction Co. Ltd. v. Ajay Kumar [Indian Railway Construction Co. Ltd. v. Ajay Kumar, (2003) 4 SCC 579 : 2003 SCC (L&S) 528])”*

*(emphasis supplied)*

16.5. In *State of AP v/s. Govardhanlal Pitti* (supra) the Supreme Court explained malice in law thus :

*“12.) The legal meaning of malice is “ill-will or spite towards a party and any indirect or improper motive in taking an action”. This is sometimes described as “malice in fact”. “Legal malice” or “malice in law” means “something done without lawful excuse”. In other words, “it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others”. (See Words and Phrases Legally Defined, 3rd Edn., London Butterworths, 1989.)*

*(emphasis supplied)*

*13. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. If at all it is malice in legal sense, it can be described as an act which is taken with an oblique or indirect object. Prof. Wade in his authoritative work on Administrative Law (8th Edn., at p. 414) based on English decisions and in the context of alleged illegal acquisition*

*proceedings, explains that an action by the State can be described mala fide if it seeks to “acquire land” “for a purpose not authorised by the Act”. The State, if it wishes to acquire land, should exercise its power bona fide for the statutory purpose and for none other.”*

*14. Legal malice, therefore, on the part of the State as attributed to it should be understood to mean that the action of the State is not taken bona fide for the purpose of the Land Acquisition Act and it has been taken only to frustrate the favourable decisions obtained by the owner of the property against the State in the eviction and writ proceedings.”*

16.6. In *State of Punjab v/s. Gurdial Singh* (supra) the Supreme Court expounded on what amounts to malafide exercise of power and held that in the case of malice in law, neither any pleading, nor any strict proof is necessary. The Supreme Court held as follows:

*“9.) The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power — sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions — is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. **If the use of the power is for the fulfilment of a legitimate object the actuation or***

*catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: “I repeat . . . that all power is a trust — that we are accountable for its exercise — that, from the people, and for the people, all springs, and all must exist”. Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act.”*

*(emphasis supplied)*

16.7. In *Kalabharti Advertising v/s. Hemant Narichania* (supra), the Supreme Court observed as under :

*“25.) The State is under obligation to act fairly without ill*

*will or malice— in fact or in law. “Legal malice” or “malice in law” means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for “purposes foreign to those for which it is in law intended”. It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. (Vide ADM, Jabalpur v. Shivakant Shukla [(1976) 2 SCC 521 : AIR 1976 SC 1207] , S.R. Venkataraman v. Union of India [(1979) 2 SCC 491 : 1979 SCC (L&S) 216 : AIR 1979 SC 49], State of A.P. v. Goverdhanlal Pitti [(2003) 4 SCC 739 : AIR 2003 SC 1941], BPL Ltd. v. S.P. Gururaja [(2003) 8 SCC 567] and W.B. SEB v. Dilip Kumar Ray [(2007) 14 SCC 568 : (2009) 1 SCC (L&S) 860])”*

*(emphasis supplied)*

*“26.) Passing an order for an unauthorised purpose constitutes malice in law. (Vide Punjab SEB Ltd. v. Zora Singh [(2005) 6 SCC 776] and Union of India v. V. Ramakrishnan [(2005) 8 SCC 394:2005 SCC (L&S) 1150])”*

*(emphasis supplied)*

16.8. In *Smt. S. R. Venkatraman v/s. Union of India* (supra) the Supreme

Court held thus:

*“5.) We have made a mention of the plea of malice which the appellant had taken in her writ petition. Although she made an allegation of malice against V.D. Vyas under whom she served for a very short period and got an adverse report, there is nothing on the record to show that Vyas was able to influence the Central Government in making the order of premature retirement dated March 26, 1976. It is not therefore the case of the appellant that there was actual malicious intention on the part of the Government in making the alleged wrongful order of her premature retirement so as to amount to malice in fact. Malice in law is however, quite different. Viscount Haldane described it as follows in Shearer v. Shields [(1914) AC 808, 813]:*

*“A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of his mind is concerned, he acts ignorantly, and in that sense innocently.” Thus malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause.”*

*6.) It is however not necessary to examine the question of malice in law in this case, for it is trite law that if a discretionary power has been exercised for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith. As was stated by Lord Goddard. C.J. in Pilling v.*

*Abergele Urban District Council [(1950) 1 KB 636 : (1950) 1 All ER 76] where a duty to determine a question is conferred on an authority which state their reasons for the decision, and the reasons which they state show that they have taken into account matters which they ought not to have taken into account, or that they have failed to take matters into account which they ought to have taken into account, the court to which an appeal lies can and ought to adjudicate on the matter.*

*“7.) The principle which is applicable in such cases has thus been stated by Lord Esher, M.R. in Queen on the Prosecution of Richard Westbrook v. The Vestry of St. Pancras [(1890) 24 Q BD 371, 375: 62 LT 440]:*

*“If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion.”*

*This view has been followed in Sadler v. Sheffield Corporation [(1924) 1 Ch 483].”*

16.9. In ***Birendra Kumar Singh v/s. Union of India*** (supra) the Calcutta High Court expounded when malice can be inferred from existing facts and held as follows:

***“Malice in fact Piercing the veil:***

*17.) But all these facts are to be considered in the background of the present case where malice and mala fide has been alleged. In fact, the Court is not supposed to question the decision taken by the Management. But there might be reasons, which might impel the Court to pierce the veil and discover the truth and infer malice in fact or mala fide. Court is not supposed to interfere with the order of transfer. But there are exceptions to the rule.*

*18.) In a case where there are materials from which the Court can infer malice in fact or mala fide, if it appears to the Court that there are such malice or mala fide when allegations are made and materials are produced to form certain opinion, the Court has to make an endeavour to remove the curtain and pierce the veil and find out the truth. In order to do so, Court has every right to make an assessment of the matter placed before it and arrive at a conclusion even on facts. When the malice or mala fide sought to be covered under the grounds of administrative exigencies or executive reasons, there may not be any straight-cut evidence to establish malice or mala fide. In such circumstances, the Court is empowered to draw inference on the basis of the facts disclosed and materials produced before the Court and arrive at a conclusion, which according to its opinion may not be of much doubt and could be supported by justifiable reasons. The Court cannot shut its eyes and avoid its responsibility when materials are placed before it. It cannot refuse to activate itself, in a given circumstances, in order to find out the truth with a view to dispense justice. People come to the Court to seek justice. Court has a responsibility to dispense justice. The party against whom allegations are made is expected to cover up its decision or action and dress it upon in a manner to give it a colour of justification. Whether the action is colourable has to be discovered by the Court on the basis of materials looking behind the apparent.”*

*(emphasis supplied)*

*19.) In Aravind Dattatriya v. State of Maharashtra, [AIR 1997 SC 3067: (1997) 6 SCC 169.] it was held that it is most unfortunate that the Government demoralizes the officers who discharge their duties honestly and diligently and bring to book the persons indulging in black marketing and contrabanding liquor and that the transfer in the said case was not in public interest but was a case of victimization of an honest officer and that the order of transfer was a mala fide exercise of power aimed at demoralizing an honest officer discharging his duties of a public office. In the facts and circumstances of this case, as contended by Mr. Mukherjee, it appears to the Court that there are materials to conclude that this is also a case of victimization since the petitioner had the courage of detecting the shortage of stock of*

*coal, irregularity of purchase of stowing sand and transportation costs etc. An order of transfer within a span of four months, when the petitioner was instrumental in bringing to surface the irregularity in the administration, definitely appears to be an attempt to ease him out of the scenario. These facts appear to be squarely overed by the ratio laid down in Aravind Dattatriya (supra).*

*20.) In Rajendra Ray v. Union of India, [(1993) 1 SCC 148: AIR 1993 SC 1236.] the Apex Court had held, that it may not always be possible to establish malice in fact in a straight-cut manner: In an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and antecedent of facts and circumstances. But for such inference there must be firm foundation of facts, pleadings and established. Inference cannot be drawn on the basis of insinuation and vague suggestions. Having regard to the facts and circumstances of this case, there are materials from which a reasonable inference can be drawn about the malice in fact or the mala fide, as discussed hereinbefore. The inference that this Court is attempting to draw appears to be based on firm foundation as disclosed in the pleadings and the materials placed before this Court by the respective parties.*

*21.) In C. Ramanathan v. Acting Zonal Manager, PCI, Madras, [1980 (1) LLJ 1 : 1980 (1) SLR 309.] the Madras High Court had held that in a given circumstances in order to find the mala fide in the order of transfer sought to be asserted by the Government, the Court has to crack the shell of innocuousness with which the order of transfer is wrapped up and to pierce the veil to find the operative reason behind the order of transfer. In the said case the Court had found that the order was a colourable exercise of power surcharged with bad faith and motivated by irrelevant considerations. In S.V. Singh v. Union of India, [92 CWN 276.] this Court had held that the Court is required to investigate as to whether the order of transfer is tainted with malice or motive or can be said to be an order passed in administrative exigencies. The Writ Court can crack the shell to see for itself whether there is, in fact, any malice or maia fide move on the disclosure of documents by the parties. A definite motive would be a necessary ingredient to bring the charge of malice.*

**22.)** *In S. Pratap Singh v. State of Punjab, [AIR 1964 SC 72.] the Apex Court had held that every power vested in the public body or authority has to be used honestly, bona fide and reasonably. When a dominant purpose is found to be unlawful then the action itself is unlawful. It cannot be cured by showing that it had another purpose, which was lawful. A power is vested in the authority to accomplish a definite public purpose, i.e., to ensure probity and purity in the public services. But if the context suggests that such power is exercised for achieving an alien purpose, then such action would be mala fide and colourable and liable to be struck down. It can be said to be a colourable exercise of such power. **The mala fide cannot be established by direct evidence. It may not be discernible from the order impugned or from the note made in the file preceding the order. If bad faith vitiates the order, the same can be deduced as a reasonable and inescapable inference from proved facts. If such power is exercised by the Government, which is exclusive power to do so, the same can be inferred within such a circumstances even though denied by the authorities on the face of its assertion of absence of oblique motive. The Court is not precluded from enquiring into the truth of the allegations made affording appropriate reliefs to the party aggrieved by the abuse of the power.***

*(emphasis supplied)*

16.10. In *Reserve Bank Employees' v/s. State of Maharashtra* (supra) this

Court held as follows:

**“29.)** *There is difference between malice in fact and malice in law or legal malice. The expression legal malice means and implies that the action of the State is not in good faith and for the purposes of the Act. The action, in the present case, does not appear to be aimed at execution of any works of improvement or development of slum area per se, but rather to enable respondent No. 8 to develop the said property for commercial gains, notwithstanding the civil Courts finding no prima facie merit in respondent No. 8's claim, against the petitioner for the development of the said property. When malice is attributed to the State, it may not be a case of personal ill-will or spite on the part of the State. Suffice that power is exercised for some collateral or*

*oblique purpose. Suffice that the Authorities who are the custodians of power are influenced in its exercise by considerations other than that for which the power is vested in them, in the first place. Suffice that in the exercise of power, the Authority is swayed by extraneous considerations, quite irrelevant to the entrustment. Suffice, if the exercise of power is designed to the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal.”*

*(emphasis supplied)*

16.11. The principles which can thus be deduced from the aforesaid Judgments, as well as the Judgments referred to in the respective written submissions of the parties, are as under:

- i. An action is said to be vitiated by malice in fact when the same lacks good faith and is motivated by personal bias, grudge, oblique or improper motive or ulterior purpose. The malice in fact needs to be pleaded, the party concerned against whom malice in fact is alleged, needs to be impleaded and an opportunity has to be given to the party so impleaded, to respond to the allegations. The said allegations have to be established before the Court.
- ii. An Order or action can be said to be vitiated by malice in law in one or more of the following circumstances:
  - (a) From doing of a wrongful act intentionally without any just cause, **or** excuse, **or** without there being reasonable relation to the purpose of exercise of statutory power.<sup>30</sup>
  - (b) It is the attainment of ends beyond the sanctioned purposes of power by simulation or pretention of gaining legitimate goal. When the custodian of power is influenced in its exercise by consideration

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30 Rajneesh Khajuria (supra), paragraph 16 quoting from State of Bihar vs. P.P. Sharma

outside those for the promotion of which the power is vested, the Court calls it colourable exercise and is undeceived by illusion.<sup>31</sup>

- (c) It is a deliberate act in disregard to the rights of others.<sup>32</sup>
- (d) It is an act taken with an oblique or indirect object.<sup>33</sup>
- (e) Conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts.<sup>34</sup>
- (f) Passing an Order for unauthorized purpose.<sup>35</sup>

- iii. Malice in law need not be pleaded and does not need proof.<sup>36</sup> For malice in law, intention is immaterial.<sup>37</sup>
- iv. There are no strict guidelines for proving malice in a case where there is material from which the Court can infer malice. The Court is empowered to draw inference on the basis of facts disclosed and material produced before the Court and arrive at a conclusion, which according to its opinion may not be of much doubt and could be supported by justifiable reasons. The party against whom allegations are made is expected to cover up its decision or action and dress it up in a manner to give colour or justification, but the Court has to discover whether the action is colourable on the basis of material, looking beyond the apparent.<sup>38</sup> Malafide cannot be established by direct evidence. It may not be discernable from the Order impugned, or from the note made in the file preceding the Order, and can be deduced as a reasonable and

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31 State of Punjab vs Gurdayal Singh(supra), paragraph 9

32 Kalabharati Advertising (supra), paragraph 25

33 Kalabharati Advertising (supra), paragraph 25

34 Kalabharati Advertising( supra), paragraph 25

35 Kalabharati Advertising (supra), paragraph 26

36 State of Punjab vs Gurdayal Sing (supra), paragraph 18

37 Smt. S.R. Venkatraman (supra), paragraph 6

38 Birendrakumar Singh (supra), paragraph 18

unescapable inference from true facts.<sup>39</sup>

**17. The facts leading to the demolition of the said Bungalow, and whether the same disclose any malafides on the part of the Respondents :**

We now proceed to examine the facts leading to the demolition of the Petitioner's Bungalow, and whether the said facts disclose any malafides on the part of the Respondents.

**17.1. The statements / tweets of the Petitioner :**

As set out in paragraph 4.17 above, the Petitioner has made various tweets, the compilation of which is tendered in Court and taken on record in the circumstances set out in paragraph 3.2 above. In her tweets dated 30<sup>th</sup> April, 2020, 1<sup>st</sup> September, 2020 and 2<sup>nd</sup> September, 2020, the Petitioner has criticized the Mumbai Police, stating that she is more scared of them than the “movie mafia goons, in Mumbai” and that she would need security either from the Government of Himachal Pradesh (HP) or directly from the Central Government. In her tweet dated 3<sup>rd</sup> September, 2020, she has stated that Shri Sanjay Raut – Respondent No.5 has given her an open threat and asked her not to come back to Mumbai and in her said tweet she has proceeded to question, “*why Mumbai is feeling like Pakistan occupied Kashmir ?*” On 4<sup>th</sup> September, 2020, she has tweeted that many people are threatening her to not come back to Mumbai, so she has decided to travel to Mumbai on **9<sup>th</sup> September, 2020**, and concluded the said tweet by saying, “*kisi ke baap main himmat hai toh rok le*”.

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39 S. Pratap Singh vs. State of Punjab, AIR 1964 SC 72, paragraph 9

Thereafter, the Petitioner was given protection under 'Y' Plus Category by the Central Government to travel to Mumbai.

**17.2. Outbursts of Shri Sanjay Raut – Respondent No.5 on 5<sup>th</sup> September, 2020 and the news report in 'Saamna' dated 10<sup>th</sup> September, 2020, the day after demolition :**

17.2.1. As stated earlier Shri Raut is a Member of the Rajya Sabha and the Chief Spokesperson of a political party i.e. Shiv Sena, which Party is a part of the Government of Maharashtra and is also the ruling party in the MCGM. Shri Raut is also the Executive Editor of the Marathi Daily Newspaper 'Saamna'. As stated earlier, on 3<sup>rd</sup> September, 2020, the Petitioner tweeted that, "*Sanjay Raut Shiv Sena leader has given me an open threat and asked me not to come back to Mumbai, after Aazadi graffitis in Mumbai streets and now open threats, why Mumbai is feeling like Pakistan occupied Kashmir ?*." This statement appears to have angered Shri Sanjay Raut to such an extent that on 5<sup>th</sup> September, 2020, a news report appeared on the first page of the Newspaper 'Saamna' captioned, - मुंबईशी पंगा, पडेल महंगा ! **Meaning** : Joining issues with Mumbai, will prove costly. In the said news report, it was stated that the statement of the Petitioner – Kangana Ranaut, referring to Mumbai as Pakistan occupied Kashmir, thereby joining issues with Mumbai and Mumbaikars, is going to prove costly for her. In the said news report, a quote of Shri Raut has appeared in which Shri Raut interalia states that, **it is a promise that Shiv Sena will perform**

***Shraddha*** (i.e. **obsequies**) of such enemies of Maharashtra. The said news report is dealt with in the written submissions filed on behalf of Shri Raut, wherein the said news report or its contents have not been denied or disputed, except to the extent of stating that it reports that the Maharashtra Home Minister had stated that if the Petitioner did not feel safe in Mumbai, she had no right to stay in Maharashtra, and that the said news report is not part of the pleadings, the Court may not take cognizance of the same. It is pertinent to note that the said news report does form part of a compilation which was submitted in Court on 28<sup>th</sup> September, 2020, in the circumstance set out in paragraph 3.2 above. No objection was taken on behalf of Shri Raut, when the said compilation was tendered in Court and was taken on record and relied upon during arguments.

17.2.2. The Petitioner has alongwith the Writ Petition also produced a DVD containing a video clip of the interview of Shri Raut (in Hindi) by the Reporter of the News Nation Channel. The English version of the said interview is set out in Paragraph 4.20 of this Order. We have played the video clip in Court and noted that when the Reporter of News Nation Channel enquired from Shri Raut whether his party, i.e. Shiv Sena, will stop the Petitioner from entering Mumbai and that some leaders had stated that they would stop her and beat her, Shri Raut stated that, “*Shiv Sena is not just the Jaagir of Maharashtra, all parties are there in it, all persons are in it, all of us will meet and decide.*” Therefore, the answer of Shri Raut clearly conveys that all persons including Shri Raut will meet and decide whether to stop the Petitioner from

coming to / entering Mumbai and whether to beat her. In response to the above answer, Shri Raut was reminded by the Reporter of the News Nation Channel that it was his Government and enquired as to whether Shri Raut would take any action against the law, to which Shri Raut unabashedly retorted, “*kya hota hai kanoon ?*” Has the girl respected law in what she has spoken ? He thereafter proceeded to abuse the Petitioner and to reprimand the correspondent of the Channel by questioning, “*Why are you advocating for the **haramkhor** girl who has insulted Shivaji Maharaj and Maharashtra ? Is your Channel supporting her ?*”

17.2.3. Shri Sanjay Raut has not denied or disputed the contents of the videoclip containing his aforestated interview. He has in his Affidavit only refuted the allegation that he has threatened the Petitioner and, as a cover-up, tried to explain that the use of the word ‘*haramkhor*’ was in the context of her dishonesty and that he had only responded to the derogative statement made by the Petitioner insulting the State of Maharashtra and Mumbai, which explanation we do not accept.

17.2.4. Immediately on the day after the demolition, i.e. 10<sup>th</sup> September, 2020, of the newspaper ‘Saamna’ of which Shri Raut is the Executive Editor, reported the demolition on its first page in a manner of rejoicing and victoriously, with the headline “**उखाड दिया**”, meaning : ‘uprooted’. In the said news report, it is interalia stated that the Petitioner who was unnecessarily spoiling the name of Mumbai Police by comparing Mumbai with Pakistan Occupied Kashmir **has received a good blow from**

**MCGM.**

17.2.5. The aforesaid response of Shri Raut and the language used by him show that because the Petitioner tweeted on 3<sup>rd</sup> September, 2020 that she was threatened by Shri Raut and questioned, “why Mumbai is feeling like Pakistan occupied Kashmir”. Shri Raut, without being bothered that the rule of law should always prevail, was determined to teach a lesson to the Petitioner. Such conduct certainly does not befit a leader like Shri Raut who is also a Parliamentarian.

17.3. **On 5<sup>th</sup> September, 2020, i.e. the very same day, of Shri Raut’s outburst in the issue of ‘Saamna’ and in his interview to the News Nation Channel, Shri Keluskar, the Mukadam of the MCGM lands up at the Petitioner’s Bungalow and detects alleged ongoing works, which MCGM had failed to take notice of when the entire Bungalow, including its huge outer facade was renovated and was thereafter seen standing, complete in all respects, atleast since January 2020.**

17.3.1. As stated hereinabove, Shri Late – Respondent No. 4 in his Affidavit relied upon the Circular issued by the MCGM on 15<sup>th</sup> March 2012, which sets out instructions for the staff of MCGM to follow, for demolition of unauthorized constructions, and warns the MCGM staff of serious action if the same is not followed carefully. For demolition of the ongoing unauthorized construction (which the

MCGM has alleged in the present case) the following instructions would be applicable :

- i. The ongoing unauthorized construction which is detected, should be contrary to the provisions of Section 342 and 347 of the Act and must be one 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.
- ii. The work can be detected during the usual round of inspection or receipt of complaint from any member of the public;
- iii. The concerned officer detecting such unauthorized work under construction, shall take photographs showing the date and status of the work and prepare a panchnama / inspection report of the work in progress.
- iv. The concerned officer shall then immediately make an entry in the detection register and prepare a notice under Section 354A of the Act, showing rough sketch of the unauthorized construction, take signature of the officer authorized to sign such notice and serve it on the person / owner carrying out such construction.
- v. Copy of the said notice is required to be sent to the local police station for registering the complaint.

17.3.2. Shri Late, Respondent No.4, the designated officer of the MCGM , H/ West Ward, has stated on oath (in his Affidavits dated 10<sup>th</sup> September, 2020 and 17<sup>th</sup> September, 2020) that on 5<sup>th</sup> September, 2020, Shri Keluskar, the Officer (Mukadam)

in the course of routine inspection in the area, noticed construction work taking place at the said Bungalow and a detection report was prepared by the said Mukadam on 5<sup>th</sup> September, 2020 at about 1.00 p.m. Shri Late has in his said Affidavits neither relied upon the “detection report” prepared by the Mukadam, nor has he made a whisper about any photographs being taken by the Mukadam on 5<sup>th</sup> September, 2020. Shri Late has in his Affidavits not stated anything about any panchnama / Inspection Report, which was required to be prepared by the Mukadam with regard to the work in progress, nor has he mentioned about any entry which the Mudakam was bound to make in the detection register as mandated by the Circular. This is so, despite Shri Late himself having relied on the Circular of the MCGM dated 15<sup>th</sup> March, 2012. Shri Late has also not stated that the Mukadam was satisfied that the unauthorized construction which was allegedly in progress in the said Bungalow was contrary to the provisions of Sections 342 and 347 of the Act and where change in foundation, plinth or structural addition, alteration load bearing walls which may endanger the life and property of the occupiers or other persons, was detected.

17.3.3. In view of the above, and more particularly in view of the above requirements set out in the MCGM’s Circular, which the Mukadam was bound to follow, this Court directed its Associate to request the MCGM to forward the Detection Report prepared by the Mukadam on 5<sup>th</sup> September, 2020, and also the photographs taken by him of the ongoing unauthorized works on that day i.e. 5<sup>th</sup> September, 2020. It is only thereafter, that the MCGM for the first time *interalia*

forwarded the purported Detection Report dated 5<sup>th</sup> September, 2020 prepared by the Mukadam, which is captioned as “Service Report”. How a detection report is captioned as ‘Service Report’ is not explained by Shri Late in any of his Affidavits.

17.3.4. Be that as it may, in his purported detection report, the Mukadam has stated that on 5<sup>th</sup> September, 2020 when he was **distributing notices under Section 353B in the old buildings he inspected the said Bungalow**. He has stated that he saw some sacks of rubble/kachara and since the gate of the said Bungalow was open, he went inside and saw that the work was in progress. The aforesaid statement by the Mukadam in his purported detection report belies the statement made on oath by Shri Late in his Affidavit dated 10<sup>th</sup> September, 2020, that **the Mukadam in the course of routine inspection in the area on 5<sup>th</sup> September, 2020**, noticed construction work taking place at the said Bungalow of the Petitioner.

17.3.5. Upon perusing the purported detection report of the Mukadam, this Court also noted that, the Mukadam has in his detection report not mentioned a word regarding the nature of work found in progress in the said Bungalow, or the photographs taken by him of the work in progress, or any panchnama / detection report prepared by him of the work in progress, or him having at any point of time making an entry with regard to the alleged unauthorized construction in the detection register.

17.3.6. However, alongwith the said report, the MCGM had now forwarded five

photographs purportedly taken on 5<sup>th</sup> September, 2020, and the same were relied on for the first time by Shri Late in his Affidavit dated 24<sup>th</sup> September, 2020, by stating on oath that the Mukadam had on 5<sup>th</sup> September, 2020 taken photographs during his visit to the said Bungalow. Since there was no mention of the five photographs in the purported detection report of the Mukadam dated 5<sup>th</sup> September, 2020, or in the Affidavits dated 10<sup>th</sup> and 17<sup>th</sup> September, 2020 of Shri Late, and since there was no date or time shown on the said 5 photographs as required under Circular of MCGM dated 15<sup>th</sup> March, 2012, and further since even at this stage, there was no photograph produced showing the rubble / debris which according to the Mukadam made him enter the said Bungalow to check any ongoing works being carried out, this Court sensing some mischief involved with regard to the alleged inspection dated 5<sup>th</sup> September, 2020, asked Shri Chinoy, the Learned Senior Advocate for the MCGM on 25<sup>th</sup> September, 2020, to confirm whether the photographs were taken by the said Mukadam on 5<sup>th</sup> September, 2020. Shri Chinoy immediately took instructions and Shri Late confirmed that the photographs were indeed taken by the Mukadam on 5<sup>th</sup> September, 2020. Not satisfied with the answer, this Court asked the MCGM to deposit in Court, the camera used by the Mukadam to take the said photographs. Thereupon Senior Advocate Shri Chinoy assured the Court that the mobile phone on which the Mukadam had taken photographs on 5<sup>th</sup> September, 2020, would be deposited in Court at the earliest. Two days thereafter, i.e. on 28<sup>th</sup> September, 2020, when the hearing of the matter recommenced, this Court inquired with Shri Chinoy

whether the camera/mobile phone of the Mukadam was deposited in Court. As expected, the Court was now told that the Mukadam had not taken any photographs on 5<sup>th</sup> September, 2020, and it was a Sub-Engineer of MCGM who had accompanied the Mukadam and had taken the photographs. At no point of time prior to 28<sup>th</sup> September, 2020, was this Court told by way of a report or by an Affidavit or in the oral arguments of the MCGM that a Sub-Engineer of the MCGM had accompanied the Mukadam when he visited the said Bungalow.

17.3.7. The dishonesty of Shri Late, is amply borne out by the fact that, Shri Late in his Affidavits dated 10<sup>th</sup> and 17<sup>th</sup> September, 2020 had not made a whisper with regard to any photographs taken by the Mukadam on 5<sup>th</sup> September, 2020, and only after this Court, in view of the requirement in the Circular, called upon MCGM to produce the photographs taken during inspection on 5<sup>th</sup> September, 2020, relied on some photographs which had no date or time on it. Thereafter for the first time Shri Late stated on oath in his Affidavit dated 24<sup>th</sup> September, 2020 that the photographs were indeed taken by the Mukadam on 5<sup>th</sup> September, 2020, now stands completely exposed, and the Court has no doubt that since the guidelines / instructions set out in the Circular dated 15<sup>th</sup> March, 2012 were totally breached, Shri Late as well as the Mukadam brazenly resorted to mislead this Court in the aforesaid manner. This Court therefore informed Shri Chinoy that this was a clear attempt on the part of Shri Late as well as Shri Keluskar (Mukadam) to mislead the Court, Shri Chinoy informed the Court that he appreciated what was conveyed to him by the Court and he had

already informed the officers that they would have to face the consequences. Again, when we enquired at the time of arguments whether an entry was made in the detection register after the purported detection of works on 5<sup>th</sup> September, 2020, since making of such entry was made mandatory as per the said Circular dated 15<sup>th</sup> March, 2012 relied by the MCGM itself, we were informed by MCGM that the Mukadam had not made the required entry in the detection register. It was also admitted that the status of the work which the Mukadam was required to set out, in compliance with the guidelines / instructions in the Circular of the MCGM is also not found in the purported Report of the Mukadam dated 5<sup>th</sup> September, 2020. In short, the Mukadam had breached every requirement set out in the MCGM's Circular dated 15<sup>th</sup> March, 2012, which MCGM itself has relied upon in its Affidavit dated 10<sup>th</sup> September, 2020. The above conduct, supported by the above facts and evidence, is one crucial pointer in the chain of events, showing that Shri Late and his officers were at least since 5<sup>th</sup> September, 2020 determined to cause damage to the said Bungalow by demolishing the same, thereby causing loss to the Petitioner. To achieve this end, Shri Late and his team/officers, have not only ignored all the provisions of law, as well as their own Circular/guidelines dated 15<sup>th</sup> March, 2012, which Shri Late himself relied on, but have *inter alia* by making false statements on oath, attempted to mislead this Court.

So much for the Mukadam's alleged detection of unauthorized works at the said Bungalow on 5<sup>th</sup> September, 2020, and his purported Report of the same day.

**17.4. Visit of Shri Late and his officers to the said Bungalow on 7<sup>th</sup> September, 2020 and preparation of the handwritten inspection report at the Bungalow, absence of any mention qua rubble / kachara / plywood in the said report or any other report :**

17.4.1 On 7<sup>th</sup> September, 2020, Respondent No. 4 - Shri Late, designated officer of the MCGM alongwith his team / other officials of MCGM took inspection of the said Bungalow and prepared a handwritten inspection report at the said Bungalow. The said handwritten inspection report is reproduced hereunder :

*“During inspection, following discrepancies observed beyond approval plan.*

*I) Ground floor -*

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

*II) First floor -*

- a) Unauthorised room/cabin with wooden partition made in living room.*
- b) One meeting room/cabin mode in pooja room.*
- c) Unauthorized construction of toilets in open chowk area with BM Walls.*
- d) Unauthorized extension of slab in front side admeasuring 2’6”*

*III) Second floor -*

- a) Staircase orientation is changed.*
- b) Balcony found enclosed in habitable area by removing dividing walls.*
- c) Unauthorized extension of slab at front side admeasuring 3’0”.*
- d) Bedroom of adjoining row house No.4 is merged into row house No.5 by removing partition wall.*
- e) toilet of adjoining bedroom is found removed and some area used*

*as habitable area.*

*At first and second floor, internal renovation, finishing work is found in progress. Partition of entrance gate at ground floor is changed.”*

17.4.2. In addition to what is stated in paragraphs 14.1 to 14.18 above, alongwith the photographs reproduced therein, a reading of the above handwritten inspection report dated 7<sup>th</sup> September, 2020, itself confirms that all the works shown on the ground, first and second floors of the said Bungalow were completed and were therefore ‘existing works’. The last paragraph of the said handwritten inspection report is important, since Shri Late and the officers of MCGM who were present with him, described the ongoing unauthorized works by stating in the said Report that, “*At first and second floor internal renovation, finishing work is found in progress. Position of entrance gate at ground floor is changed.*” Therefore, Shri Late and his officers found no internal renovation/finishing work in progress on the ground floor during inspection on 7<sup>th</sup> September, 2020. Within a few hours after the preparation of the above handwritten inspection report, the First Inspection Report was uploaded by Shri Late and his officers on the Removal of Encroachment Department Tracking and Data Management System (‘RETMS’), wherein shockingly the above description to the effect that internal renovation/finishing work is found in progress at the first and second floors, is now changed to, “*unauthorized construction, addition, alteration and amalgamation work is in progress at G+2 Bungalow No.5 without any permission from competent authority*”. Even otherwise, Shri Late and his officers in the said handwritten

inspection report have not provided any particulars / description whatsoever of the alleged work/s in progress on the first and second floors of the said Bungalow. In the said handwritten inspection report, despite specific requirements mentioned in the Circular dated 15<sup>th</sup> March, 2012, there is not a whisper made about any photographs taken or panchnama made with regard to any alleged materials like rubble / kachara / debris being found in the said Bungalow during inspection, and the same having resulted from the alleged ongoing unauthorized works, or any material like plywood etc. being used for the alleged unauthorized ongoing works, or any such material accumulated as a result of such alleged unauthorized works. In one of the photographs, two small bags can be seen lying on the **ground floor** with some pieces of wood / plywood in it. Again, Shri Late / MCGM needs to be reminded that according to their own handwritten inspection report, there was no internal renovation, finishing work found in progress / being carried out on the ground floor, it is nowhere mentioned in any report that any wood / plywood was used in the course of ongoing unauthorized works. In fact, no photograph of any rubble / kachara is produced. It appears that Shri Late and his officers, being aware of this fact, have thus not bothered to either take specific photographs of the same or mention the same in any report or to make a panchnama in regard to the same, as infact no photograph would corroborate their false claim of alleged ongoing unauthorized works at the said Bungalow. This omission of not taking photographs, nor drawing up a panchnama, nor mentioning the finding of any rubble / kachara, is all the more glaring, since Item

14 of the First Inspection Report requires to set out the “*stage of construction and material used*”. Again, no particulars are provided with regard to the workmen carrying out the alleged works. Certain measurements are mentioned in the said report as can be seen in Item ‘d’ under the caption “*first floor*” and Item ‘c’ under the caption “*second floor*”, which measurements by themselves do not further the case of MCGM that infact ongoing unauthorized works was in progress at the time of the inspection.

17.4.3. It will not be out of place to mention here, that though Shri Late stated in his Affidavit dated 10<sup>th</sup> September, 2020 that he had annexed thereto the photographs taken on 7<sup>th</sup> September, 2020, not a single photograph was annexed to the said Affidavit filed before this Court, and the same were produced only in the third week of September, 2020, and that to after the Court through its Associate called for the same.

17.4.4. We are convinced that Shri Late was extremely reluctant when it came to forwarding copies of the photographs, or the rough sketch of the work in progress to the Petitioner and the Court, since Shri Late was and is well aware that the photographs taken did not support his case of any ongoing unauthorized works being carried out in the entire Bungalow through six workmen. All that the photographs show is that all ‘unauthorized works’ are completed in all respects and are therefore ‘existing works’ and that only one workman alongwith a helper is doing some painting / polishing / waterproofing work with a box of paint / polish, in the

discussion room, as against the alleged statement made for the first time in the Affidavit dated 17<sup>th</sup> September, 2020 of the Shri Late that six workmen were found to be carrying out unauthorized works in the said Bungalow.

**17.5. First Inspection Report dated 7<sup>th</sup> September, 2020 uploaded by MCGM on Removal of Encroachment Department Tracking and Data Management System ('RETMS') :**

17.5.1. As mentioned earlier, though the Circular relied upon by the MCGM mandates an immediate entry in the detection register by the officer detecting the unauthorized work/s and though Shri Late has stated in his Affidavit that Shri Keluskar (Mukadam) had detected the unauthorized works being carried out on 5<sup>th</sup> September, 2020, Shri Late has admitted in Court that no entry was made in the detection register on 5<sup>th</sup> September, 2020. Instead the First Inspection Report shows the date of detection as 7<sup>th</sup> September, 2020 at 15.27 p.m. No explanation has come forth from the MCGM as to why there is no entry in the First Inspection Report qua the admitted detection allegedly on 5<sup>th</sup> September, 2020 and why the date of detection is shown as 7<sup>th</sup> September, 2020. In answer to a query, as to why the time of detection is shown as 15.27 p.m. on 7<sup>th</sup> September, 2020, it is stated that the time of uploading the First Inspection Report is shown as the time of detection of the ongoing unauthorized works. The veracity of this reply is highly doubtful, as the record pertaining to detection of unauthorized work/s certainly cannot be maintained in such a misleading manner, and defeats the purpose for which it is maintained.

17.5.2. There is an inspection image at Item No.11 in the said First Inspection Report, which image/photograph has not been produced by the MCGM at any time before this Court. The Court is also not informed as to who is shown in the said image / photograph.

17.5.3. Item No.14 of the First Inspection Report captioned “*Stage and Construction of material used*” (which should read as “*Stage of Construction and material used*”), requires MCGM to fill in the relevant particulars in the table shown underneath the said item. As we will see hereunder, the said table requires the most relevant particulars pertaining to the alleged ongoing unlawful/unauthorized work/s to be provided in the said Inspection Report.

17.5.4. Shri Late and his officers now finding it difficult to provide the required particulars, have in the said Table at Item No.14 of the First Inspection Report filled in the “particulars” pertaining to the “**Stage of Construction and material used**” as under:-

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.”

The particulars provided by Shri Late and his officers (if at all the same can be termed

‘particulars’) under the columns - ‘name’, ‘Structure Length (mtr.)’, ‘Structure Width (mtr.)’, ‘Structure Height (mtr.)’ and ‘Structure Material Remark’ make no sense, and fully expose the attempt of Shri Late and his officers to create a false record of the unauthorized work in progress in the entire Bungalow of the Petitioner. To demonstrate how Shri Late has dishonestly conducted himself in this matter, we repeat that though in the handwritten inspection report prepared at site and signed by Shri Late and his officers, it was stated that, *“at first and second floor, internal renovation, finishing work is found in progress. Partition of entrance gate at ground floor is changed”*, in the last column of the above Table in the ‘First Inspection Report’, the same is now for the first time changed to *“Unauthorised construction, addition, alteration and amalgamation work is in progress at G+2 Bungalow No.5 without any permission from competent authority.”* No particulars whatsoever of any unauthorized construction and the material used for such unauthorized construction are provided by Shri Late in the said Table, despite there being a specific requirement to do so. The reason for not doing so is already mentioned hereinabove, namely that Shri Late and his officers were always aware that there were no ongoing unauthorized works as alleged by them, and that all the works carried out in the said bungalow were existing works which were complete in all respects.

17.5.5. In Item Nos. 15 and 16 of the First Inspection Report dated 7<sup>th</sup> September, 2020, the officer of the MCGM is required to answer the following queries:

*“15) Whether the Construction is an extension to the existing structure or an independent structure :”*

*“16) Whether the Construction is in the nature of addition & alteration to the existing structure :”*

Both the above Items are answered by Shri Late and his officers in the negative. When MCGM was confronted with the answers in the negative to Item Nos. 15 and 16 above, an attempt was made to cover up the same by submitting that MCGM has in Item Nos. 14 and 27 stated *“Unauthorised construction, addition, alteration and amalgamation work is in progress at G+2 Bungalow No.5 without any permission from competent authority.”*. MCGM seems to forget that what is stated in Item Nos. 14 and 27 is belied not only by Item Nos. 15 and 16 of the First Inspection Report, but also by the handwritten inspection report of Shri Late himself, wherein it is alleged that, *“At first and second floor, internal renovation, finishing work is found in progress. Partition of entrance gate at ground floor is changed”*, thereby conveying that no works were ongoing on the ground floor.

17.5.6. Item No. 4 of the First Inspection Report requires mentioning of the name of the Inspection Officer. However, the same is not filled in and is left blank.

17.5.7. In response to Item No. 23 of the First Inspection Report, “whether the structure is occupied and if yes since when and the name(s) of the occupier”, the answer given in the negative is incorrect. Item No. 24 of the First Inspection Report which requires the Name(s) and Address(es) of the owner(s) of the structure is also

kept blank.

17.5.8. Though the First Inspection Report requires the MCGM to show the sketch of the unauthorized construction/s, no sketch whatsoever is provided under the caption “Sketch”, instead the photograph of one person doing some polishing / painting / waterproofing work in the discussion room is shown.

So much for the First Inspection Report dated 7<sup>th</sup> September, 2020.

**17.6. Impugned Notice dated 7<sup>th</sup> September, 2020 :**

Shri Late took inspection of the said Bungalow on 7<sup>th</sup> September, 2020, prepared a handwritten inspection report on the same day, prepared the First Inspection Report and uploaded the same on the RETMS system of the MCGM on the same day, prepared a notice on the same day and got it pasted on the outer door of the said Bungalow on 8<sup>th</sup> September, 2020 at 10.03 a.m. Despite the entire alleged unauthorized works, as held hereinabove being ‘existing works’ on the day the inspection was taken, Shri Late issued a Notice to the Petitioner under Section 354A of the Act.

17.6.1. Though the Circular dated 15<sup>th</sup> March, 2012 relied upon by the MCGM itself, provides that the notice prepared under Section 354A of the Act should show a rough sketch of the unauthorized construction, and consequent thereto, though clause 7 of the impugned Notice specifically requires a sketch of the alleged unauthorized work/s to be provided, no such sketch is provided in the impugned Notice, but the

same photograph shown in the First Inspection Report of a man standing on a ladder with a brush in his hand, is placed under the caption ‘sketch (not on scale)’ of the impugned Notice. As a cover up Shri Late prepared a sketch and annexed it to his Affidavit dated 24<sup>th</sup> September, 2020, which to the knowledge of Shri Late was too late in the day and cannot be accepted. Shri Late ought to have known that it was impossible to expect a noticee to answer a notice without being provided with all the photographs showing the work/s in progress, and also the sketch admittedly required to be forwarded to the noticee alongwith the Notice.

17.6.2. Section 354A of the Act requires the recipient of the notice to stop the unauthorized work which is being carried out **or** produce permission of the MCGM to carry out such work within 24 hours from the receipt of said notice. However, clause 4 of the impugned Notice served by Shri Late on the Petitioner reads thus :

*“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.”*

*(emphasis supplied)*

Shri Late has therefore informed the Petitioner that if she fails to stop execution of the work forthwith, or if the work is stopped **and** after stopping the work, she fails to produce the permission within 24 hours, he shall under Section 354A and in exercise

of powers and functions conferred upon him, without any further notice, cause the work to be removed or pulled down. The Notice issued and served by Shri Late on the Petitioner was therefore defective and for this reason is also in violation of Section 354A of the Act.

17.6.3. In the impugned Notice dated 7<sup>th</sup> September, 2020, addressed to the Petitioner and signed by Shri Late, he has again described the alleged unauthorized work/s as the ongoing renovation and finishing work to the unauthorized portion of the said Bungalow, thereby including the ground + 2 floors of the said Bungalow, which again is contrary to the statement, *“that internal renovation, finishing work is found at first and second floors”* made by Shri Late and his officers in the handwritten inspection report also dated 7<sup>th</sup> September, 2020.

17.6.4. Upon inspection of the said Bungalow by Shri Late and his officers on 7<sup>th</sup> September, 2020, the handwritten inspection report was prepared by them at the said Bungalow itself. Under the caption/category ‘*Ground floor*’ of the said Report, the description, *“Unauthorized kitchen is constructed in store room on the ground floor”* is not found. However, in item ‘b’ of the impugned Notice, the description “unauthorized kitchen being constructed on the ground floor” is found. The answer given by Shri Late is that, in the handwritten inspection report it was mentioned *“U/a additions and alterations with partition walls”*, which was thereafter more specifically described in the impugned Notice. It is therefore clear that apart from the handwritten

inspection report, Shri Late and his officers had some other notings which were not found to be mentioned in the handwritten inspection report, but introduced for the first time in the impugned Notice. In our view, Shri Late could not have changed the description of any portion of the said Bungalow, which was not so mentioned/described in the handwritten inspection report.

17.6.5. Except for reproducing only one photograph in the said impugned notice i.e. one person standing on the ladder with a brush in his hand and appearing to carry out some polishing / painting / waterproofing work in the discussion room, Shri Late has not forwarded any other photograph of any alleged unauthorized work being carried out in the said Bungalow, to the Petitioner. Shri Late and Shri Keluskar (Mukadam) have also not bothered to prepare a sketch of the unauthorized work/s as required under MCGM's Circular dated 15<sup>th</sup> March, 2012, and as can be seen from Clause 7 of the impugned Notice, which sketch was also required to be forwarded to the Petitioner alongwith the impugned Notice. However, Shri Late, without providing the photographs and the sketch to the Petitioner alongwith his impugned Notice, expected the Petitioner to answer the impugned Notice, i.e. without the Petitioner being told as to what according to Shri Late were the alleged ongoing renovation and finishing works in the alleged unauthorized portions of the said Bungalow, more so when Shri Late, as stated hereinabove, after taking a stand qua the renovation / finishing works in the handwritten inspection report, has subsequently changed the same in the First Inspection Report and in the impugned Notice.

**17.7. Reply dated 8<sup>th</sup> September, 2020 submitted by the Advocate for the Petitioner to Respondent No.4 – Shri Late in response to his impugned Notice dated 7<sup>th</sup> September, 2020, pasted on the outer door of the said Bungalow on 8<sup>th</sup> September, 2020 at 10.03 a.m.**

17.7.1 The Advocate for the Petitioner forwarded a reply on behalf of the Petitioner to Shri Late at 4.00 p.m. on 8<sup>th</sup> September, 2020, i.e. the same day on which Shri Late got the impugned Notice affixed on the outer door of the said Bungalow at 10.03 a.m. The Petitioner, who was not in Mumbai, and who was called upon by Shri Late to respond to his Notice without providing her with photographs or sketch of the alleged ongoing unauthorized works, except one photograph of a man doing some painting / polishing / waterproofing work in the discussion room, (which work may well be tenantable repair and for which no permission of the MCGM is required), being completely unaware as to what according to Shri Late were the unauthorized works carried out in the said Bungalow, correctly recorded at the very outset, through her Advocate that, *“no work is being carried out by my client in her premises as falsely understood by you, therefore, the notice issued by you as Stop Work Notice is absolutely bad-in-law and appears to have been issued only to intimidate my client by misusing your dominant position”*.

The Learned Advocate for the Petitioner further recorded that,-

(i) all the allegations made by the MCGM **“by resorting to falsehood”** shall be legally dealt with by the Petitioner under the appropriate provisions of law.

- (ii) the Petitioner is expected to arrive in Mumbai on 9<sup>th</sup> September, 2020 and she be granted a maximum of 7 days time to respond to and duly address the concerns raised in the impugned Notice.
- (iii) Shri Late should not misuse his dominant position to cause prejudice to the Petitioner with any hidden agenda coupled with ulterior motives.
- (iv) Shri Late should not take the law in his hands, and instead give sufficient time to the Petitioner to respond to the impugned Notice.
- (v) the Petitioner hopes that wiser counsel shall prevail and Shri Late will not carry out any acts, which are against “the interest of justice”.

**17.8. Shri Late by his letter dated 7<sup>th</sup> September, 2020, directs the Duty Officer of Khar Police Station to drive out unnamed persons from the said Bungalow before passing his Order of Demolition dated 9th September, 2020, i.e. without dealing with the reply of the Petitioner’s Advocate dated 8th September, 2020.**

17.8.1. Clause (2) of Section 354A of the Act reads thus:

*“2) If the erection of the building or execution of the work is not stopped as required by the Commissioner, or permission approved by the competent authority in favour of the erection of the building or execution of the work is not produced within twenty-four hours from the service of notice referred to in sub-section (1), the Commissioner may, without further notice, remove or pull down the building or work and the expenses thereof shall be paid by the said person or owner of the building or work. The Commissioner may also direct that any person directing or carrying out such erection or work shall be removed by any police officer from the*

*place where the building, is being erected or the work is being executed.”*

17.8.2. The above provision empowers the Municipal Commissioner to remove or pull down the unauthorized works and remove any person directing or carrying out the unauthorized works, by the local police, after the noticee fails to comply with the notice within 24 hours.

17.8.3. In the instant case, Shri Late did not wait even for the statutory period of 24 hours to get over. Shri Late pasted the impugned Notice dated 7<sup>th</sup> September, 2020 on the outer door of the Petitioner’s Bungalow on 8<sup>th</sup> September, 2020 at 10.03 a.m. The Advocate for the Petitioner forwarded his reply to the impugned Notice at 4.00 p.m. on the same day i.e. 8<sup>th</sup> September, 2020. Shri Late rejected the explanation of the Petitioner only by his Order of demolition dated 9<sup>th</sup> September, 2020. However, Shri Late invoked Clause (2) of Section 354A of the Act at 10.30 hrs. on 8<sup>th</sup> September, 2020 vide his letter addressed to the Duty Officer, Khar Police Station, which reads thus :

*“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/unauthorized 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 office 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.”*

Shri Late has, in his said Letter, at the outset stated that, *“the below mentioned persons have unlawfully carried out / or been unlawfully carrying on erection of building/unauthorized work located at the above address”* and in paragraph 1 of his Letter, has in exercise of his powers under Section 354A (2) of the Act directed the police, to drive out the ‘above persons’ from the place of the site, without mentioning the names of any person/s (either “above” or “below”), carrying out the unlawful work/s. Shri Late has, in paragraph 2 of his Letter addressed to the police, stated that, *“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”*. The format of the above Letter makes it clear that Shri Late is required to mention the names of the workers who were carrying out the purported unauthorized work/s at the said Bungalow. However, Shri Late being conscious of the fact that only one workman with a helper was carrying out some polishing / painting / waterproofing work in the discussion room on the first floor of the said Bungalow, has throughout not named any workman in any of his reports/notice or in his Letter to the Police Station. Shri Late also avoided stating in his Affidavit dated 10<sup>th</sup> September, 2020, as to how many workers were found working in the said Bungalow and for the

first time in his Affidavit dated 17<sup>th</sup> September, 2020 stated that six workmen were working in the said Bungalow and thereafter his Affidavit dated 24<sup>th</sup> September, 2020 attempted to identify the six workmen from the photographs. The subsequent pleas are nothing but inconsistent and made with an attempt to improve the case of MCGM. As set out hereinabove, the Petitioner has explained that the waterproofing work was carried out by the person shown as Workman No.1, his helper is shown as Workman No.2, one individual who according to the Petitioner had nothing to do with the Petitioner and appeared to have accompanied the MCGM staff was shown as Workman No.3, the Caretaker of the said Bungalow Shri Shivam Rajil Varma as Workman No.4, and an electrician named Ishwar who had come to check the dimmers on the second floor as Workman No.5 and the supervisor Shri Nikhil Surve as Workman No. 6. (Reference see paragraph 14.15 page 77 of this Order).

So much for the genuineness of the claim of Shri Late that the renovation / finishing work was going on in the entire Bungalow.

**17.9. Order of demolition dated 9<sup>th</sup> September, 2020 passed by Shri Late rejecting the request of the Advocate for the Petitioner to grant a maximum of seven days time :**

17.9.1. As stated earlier by his reply letter dated 8<sup>th</sup> September, 2020, the Advocate for the Petitioner responded to the impugned Notice dated 7<sup>th</sup> September, 2020 issued to the Petitioner by Shri Late, wherein he at the outset recorded that no work was being carried out by the Petitioner in her premises as “*falsely understood by*

*you*”, i.e. Shri Late, that the allegations made by Shri Late’s Department “*by resorting to falsehood*” would be dealt with by the Petitioner who was expected to arrive in Mumbai on the next day i.e. 9<sup>th</sup> September, 2020; that a maximum of 7 days’ time be granted to the Petitioner to deal with the concerns raised by Shri Late in the impugned Notice.

17.9.2. Shri Late passed an Order of demolition dated 9<sup>th</sup> September, 2020, in paragraph 3 of which he denied the allegations made in the reply letter of the Petitioner’s Advocate as baseless, with no substance therein, and that the Petitioner had failed to produce any permission/approval/sanction to changes in approved B.C.C. plan dated 7<sup>th</sup> March, 1979. In paragraph 4 of the said Order of demolition (i.e. before the operative part of the Order), Shri Late has recorded that, “*it has been noticed that after receipt of the notice you have not stopped carrying the work and continued the work. Under these circumstances your request for maximum 07 days to respond to and duly addressed is rejected herewith.*”

17.9.3. In the operative part of the Order of demolition dated 9<sup>th</sup> September, 2020, Shri Late has whilst rejecting the reply filed by the Petitioner stated that he was satisfied that the Petitioner was carrying out the work as mentioned in the Schedule to the impugned Notice, and had failed to produce the permission/ approval/ sanction granted to carry out the changes in the approved B.C.C. plan dated 7<sup>th</sup> March, 1979. Therefore, the work carried out by the Petitioner as mentioned in the Schedule to the impugned Notice was declared as unauthorized. It was also stated that he was satisfied

that the Petitioner had not stopped the work and therefore, the notice structure as mentioned in the Schedule of the Notice was liable to be forthwith demolished.

17.9.4. When this Court, in the course of hearing, commented that though in paragraph 3 of his Order, Shri Late has stated that, “*it has been noticed that after receipt of the notice you have not stopped carrying the work and continued the work*”, Shri Late has not mentioned in any of his Affidavits when it was noticed by him or any of his officers after the inspection had taken place on 7<sup>th</sup> September, 2020 that the work was continued after the inspection on 7<sup>th</sup> September, 2020, on the next date of hearing, a response to the above observation was thought of by the MCGM, and it was submitted that since the Petitioner in her reply to the Notice had not mentioned that she had stopped the work, it was presumed that the work had not stopped. The MCGM had to be reminded that the Advocate for the Petitioner in his reply to the impugned Notice, had categorically stated that, “*no work has been carried out by the Petitioner in her premises as falsely understood by you, and therefore, the stop work notice issued to the Petitioner is absolutely bad-in-law and appears to have been issued only to intimidate the Petitioner by misusing his dominant position.*” To this, the response was that the Advocate for the Petitioner had not written in the reply letter dated 8<sup>th</sup> September, 2020 that no unauthorized work was being carried out in the said Bungalow. Shri Late is certainly aware that the work of applying paint/polish/waterproofing material on the wall / ceiling of a room or rooms cannot be construed as anything other than tenantable repairs under Section 342 of the Act and

therefore the alleged ongoing unlawful work/s set out in the impugned Notice was referred to by the Advocate as the work “*falsely understood by you*”. The MCGM, after issuing the impugned Notice, without forwarding the required photographs of the unauthorized works, as well as the sketch showing the unauthorized works, or even otherwise, certainly cannot expect a response from the Petitioner or her Advocate in the language that they want their allegations to be responded to. The statement made by the Advocate for the Petitioner in his reply letter clearly conveys that no work was being carried out by the Petitioner as alleged by the MCGM. The Advocate has also recorded that the Department of Shri Late has made allegations in the impugned Notice by resorting to falsehood. The Advocate, who was running against time and working in the absence of his client in Mumbai, was certainly not expected to address a detailed reply as to how the impugned Notice was based on incorrect facts / falsehood.

17.9.5. As set out hereinabove, the impugned Notice dated 7<sup>th</sup> September, 2020 was issued under Section 354A of the Act despite the entire ‘unauthorized work’ having been completed in all respects and only one person alongwith his helper was doing some painting / polishing / waterproofing work in the discussion room, which room again, as pointed out hereinabove, was completed atleast by April-May 2020 in all respects. Under the circumstances, Shri Late could certainly have granted some time to the Petitioner to come to Mumbai and deal with the allegations of the MCGM, which Shri Late refused to do. Admittedly, Shri Late before pasting his Order of demolition dated 9<sup>th</sup> September, 2020 on the outer wall of the said Bungalow on 9<sup>th</sup>

September, 2020 at 10.35 a.m. stating that, “*the notice structure as mentioned in the schedule of the notice is liable for forthwith demolition at your risk, costs and consequences therein*”, was already stationed at the said Bungalow alongwith his entire demolition squad with necessary equipment including a JCB and number of Police Officials, and started the demolition by 11.00 a.m.

**17.10. Demolition on 9<sup>th</sup> September, 2020 :**

17.10.1. MCGM commenced demolition of the said Bungalow on 9<sup>th</sup> September, 2020 and continued the same until this Court passed an ad-interim Order for stay of demolition. As set out hereinabove, before the above Order of demolition dated 9<sup>th</sup> September, 2020 passed by Shri Late was served by MCGM on the Petitioner by pasting a copy of the same on the said Bungalow, Shri Late alongwith his demolition squad (40 persons according to the news report in ‘Saamna’ dated 10<sup>th</sup> September, 2020) was ready at the site alongwith a huge contingent of police officers to commence the demolition. As stated hereinabove, the Advocate for the Petitioner moved this Court with a Writ Petition, the hearing of which commenced at 12.30 p.m. on 9<sup>th</sup> September, 2020. However, MCGM left no stone unturned in attempting to delay the said hearing. The same is recorded by this Court in its Order dated 9<sup>th</sup> September, 2020, paragraphs 5 and 6 of which are relevant and reproduced hereunder :-

*5. The matter was called out at 12.30 p.m. However, for the first ten minutes, none appeared for the MCGM despite notice being*

*served on them by the Petitioner's Advocate. In the meantime, the Advocate for the Petitioner informed the Court that today morning at around 11.00 a.m., the MCGM moved its entire machinery and in the presence of several police officers, started carrying out the job of demolition by use of heavy machines and by now 40% of the said Premises is already demolished by the MCGM. Thereafter, an in-house Advocate of the MCGM appeared and informed the Court that they do not have a copy of the Writ Petition. The Advocate for the Petitioner informed the Court that a copy of the Writ Petition has been served on the MCGM. This Court inquired from the Advocate for the MCGM whether she at least had a copy of the impugned Notice issued by the Corporation to the Petitioner. The answer given was in the negative. When this Court inquired as to who is instructing her in the matter, she informed the Court that none of the Officers of the MCGM are present with her. Since the Court was of the view that the MCGM is trying to waste the time of the Court and in the meantime complete the demolition of the said Premises, the Advocate for MCGM was orally instructed by the Court to forthwith inform the Municipal Commissioner that the Court has directed the MCGM to forthwith stop the demolition work, in the light of today's hearing pending before the Court. Since no clear assurance was coming from the Advocate that the Municipal Commissioner was so informed, the Court Associate at our instance tried to call up the Municipal Commissioner, whose cellphone was continuously switched-off. Ten minutes thereafter, the in-house Advocate for the Corporation informed the Court that the directions of this Court were conveyed to the Municipal*

*Commissioner. About 15 minutes thereafter, Shri Sakhare, Senior Advocate, for MCGM appeared before the Court through video-conferencing. In response to a query by the Court, he informed the Court that he too is not having a copy of the Writ Petition as well as copy of the impugned Notice and that the Officers of the Corporation are not with him since he is appearing from his residence.*

*6. We find the above conduct of the MCGM highly deplorable, more so since the MCGM was well aware that a Writ Petition would be filed by the Petitioner before this Court at any time, and an application seeking urgent orders will be moved by the Petitioner, and MCGM had therefore filed a Caveat before this Court. We therefore, informed Senior Advocate Shri Sakhare that such conduct on the part of the MCGM is totally unacceptable to the Court. However, Shri Sakhare immediately arranged to bring the Assistant Municipal Commissioner as well as the Executive Engineer (B&F) of H/W Ward of MCGM online to answer the queries raised by the Court.”*

17.11. From the analysis of the above facts, photographs and documents, i.e. (i) the tweets of the Petitioner, more particularly, the tweet dated 3<sup>rd</sup> September, 2020, wherein she has stated that “*Sanjay Raut has given me an open threat and asked me not to come back to Mumbai, ....*” and has questioned “*why Mumbai is feeling like Pakistan occupied Kashmir ?*”; followed by, (ii) the outbursts of Shri Sanjay Raut in the newspaper report of the Marathi daily ‘Saamna’ dated 5<sup>th</sup> September, 2020 and the

video clip recording Shri Raut's interview also dated 5<sup>th</sup> September, 2020 with the correspondent of the News Nation Channel; followed by (iii) the visit of the Mukadam of the MCGM also on the same day i.e. 5<sup>th</sup> September, 2020, to inspect the said bungalow; (iv) visit of Shri Late designated officer of MCGM H/west ward, and his officers on 7<sup>th</sup> September, 2020; (v) handwritten inspection report dated 7<sup>th</sup> September, 2020 prepared by Shri Late and his officers ; (vi) First Inspection Report dated 7<sup>th</sup> September, 2020 uploaded on the same day on the Removal of Encroachment Department Tracking and Data Management System (RETMS); (vii) notice issued by Shri Late to the Petitioner under Section 354A of the Act dated 7<sup>th</sup> September, 2020 and pasting of the same on the outer door of the said bungalow at 10.03 a.m. on 8<sup>th</sup> September, 2020; (viii) the reply dated 8<sup>th</sup> September, 2020 of the Petitioner's Advocate to the said impugned notice dated 7<sup>th</sup> September, 2020 forwarded to Shri Late; (ix) letter dated 7<sup>th</sup> September, 2020 forwarded by Shri Late to the Khar Police Station on 8<sup>th</sup> September, 2020 at 10.30 hrs.; (x) Order of demolition passed by Shri Late on 9<sup>th</sup> September, 2020 and pasted on the outer door of the said bungalow at 10.35 a.m. on the same day; (xi) the arrangements made to demolish the bungalow even before the pasting of the Demolition Order at 10.35 a.m.; (xii) the commencement of demolition at 11.00 a.m. on 9<sup>th</sup> September, 2020 ; (xiii) the attempt made to delay the hearing of the ad-interim application fixed before this Court on 9<sup>th</sup> September, 2020 at 12.30 p.m. thereby ensuring 40% demolition of the said Bungalow, before this Court could pass the ad-interim Order restraining the MCGM from

continuing with the demolition of the said bungalow ; (xiv) the demolition of the said bungalow reported on 10<sup>th</sup> September, 2020, i.e. immediately on the day after the demolition on the first page of the newspaper ‘Saamna’ of which Shri Raut is Executive Editor, in a manner of rejoicing and victoriously, with the headline “उखाड दिया”, meaning : ‘uprooted’ and interalia stating in the said news report, that the Petitioner who was unnecessarily spoiling the name of Mumbai Police by comparing Mumbai with Pakistan Occupied Kashmir **has received a good blow from MCGM**, lends credence to the Petitioner’s case that the action of demolition was malafide and was predetermined with a view to cause injury to the Petitioner before she could come to Mumbai on 9<sup>th</sup> September, 2020 in retaliation to her tweet stating that she has been openly threatened by Shri Sanjay Raut and concluding the said tweet by questioning as to “*why Mumbai is feeling like Pakistan occupied Kashmir ?*”.

17.12. There is material, both in form of pleadings and evidence adduced before the Court, indicating that the action of demolition smacks of malafides. The attempt made on behalf of the Respondents to deny the allegations made by the Petitioner and to justify the conduct of the MCGM by making allegations against the Petitioner of making false statements, denials, withholding of material facts, lack of averments in the Petition, allegations being general and vague based on conjunctures and surmises etc. are belied by this material, much of which is set out /pointed out in detail hereinabove. We would however, refrain from rendering a final verdict on

malice in fact on the basis of this material for two reasons. The first is that it is possible to say that the material may not be sufficient for a Civil Court to make a declaration of malice in fact; it may be necessary to allow the parties to lead further oral / documentary evidence and that may call for a trial. Secondly, and more importantly, it is really not necessary for us to make a declaration, though we are of the view that the material placed before us makes a strong case of such declaration, since there is a clear and palpable case of malice in law which is sufficient to redress the Petitioners grievance in this petition, as we have pointed out below.

17.13. Before we do so, however, we would in particular want to deal with the submission of Shri Chinoy namely, that if Section 354A of the Act is to be restricted only to the actual erection work ongoing on the date of the inspection and the issuance of the notice, it would result in an absurd situation that where work on the property is ongoing, the portion which has been done yesterday, or a few days ago cannot be the subject matter of Section 354A of the Act and only the portion of the work which is actually ongoing on the day of inspection can be subject matter of Section 354A of the Act. There is no such submission made in the present case by the Petitioner. As set out in paragraphs 14.1 to 14.18 and the photographs produced therein and also the photographs produced by the MCGM itself, as held hereinabove, show that all the works described in Items 'a' to 'n' of the impugned notice dated 7<sup>th</sup> September, 2020 were in existence much before the date of the inspection, i.e. at least since April-May 2020. Even the discussion room in which the job of painting / polishing /

waterproofing was ongoing, as of the date of the inspection was complete in all respects as can be seen in the photographs at page 66 of this Order bears testimony to the fact that the said discussion room was complete in all respects atleast since April-May 2020. On the other hand, and in any event, if the submission of Shri Chinoy that if any work is ongoing in an existing huge structure, which is unauthorized, the entire structure should be demolished by issuing a 24 hours notice under Section 354A of the Act, were to be accepted, the same would lead to an absurd situation and misuse of power by the officials of the MCGM leading to demolition of an entire unauthorized structure, constructed, say, 20 years back, on the ground that some renovation work / finishing work is ongoing in the interior of the structure. Section 351 of the Act would in that event become practically otiose.

**17.14. Assuming that the above facts and evidence is not enough to reach a conclusion of personal bias, grudge and oblique or improper motive or ulterior purpose they do unmistakably sustain a case of legal malice.**

17.14.1. Despite a strong case of malafides being made out as set out hereinabove, even if one assumes that these facts and the irresistible conclusion that may follow from them do not amount to a proven case of personal bias, grudge, oblique or improper motive or ulterior purpose and in that sense, may call for a trial, they do unmistakably sustain a case of legal malice for this Court to issue its Writ. As distinguished from malice in fact, which is required to be expressly pleaded and

proved, though not necessarily by direct evidence, ‘malice in law’, as held by the Supreme Court in *State of A.P v. Govardhanlal Pitti* (supra), means “something done without lawful excuse”; it is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a “deliberate act in disregard of the rights of others”. As Supreme Court observed in that case, using the explanation of Prof. Wade in “Administrative Law” (8 Edn., at p. 414), State action can be described as malafide if it is “for a purpose not authorized by the Act” under which it is taken. The Supreme Court in *State of Punjab v. Gurdial Singh* (supra) held that where the true object is to reach an end different from the one for which the power is entrusted, exercise of that power by its custodian is bad in law and lacking in bonafides.

17.14.2. As we have noted above, so far as the offending works (i.e. works in breach of Sections 342 and 347) referred to in the schedule to the impugned notice under Section 354A in our case are concerned, they are clearly referred to in the impugned notice as having been completed. The impugned notice (together with its schedule) refers to an inspection carried out prior to it being issued, which shows the following works as having been carried out unauthorizably:

- a. Toilet converted into an office cabin;
- b. Kitchen constructed in store room;
- c. New toilets constructed beside staircase inside store room and in parking area;
- d. Unauthorized pantry constructed on ground floor;
- e. Unauthorized room / cabin with wooden partition made in living room on the first floor;

- f. Unauthorized room / cabin with wooden partition made in pooja room on first floor;
- g. Unauthorized construction of toilets in open chowk area;
- h. Unauthorized horizontal extension of slab on front side;
- i. Staircase orientation changed on the second floor;
- j. Balcony found enclosed in habitable area by removing partition walls on second floor;
- k. Unauthorized horizontal extension of slab at front side on second floor;
- l. Bedroom of adjoining bungalow merged into the Petitioner's bungalow by removing the partition wall on second floor;
- m. Toilet of adjoining bedroom of the adjoining bungalow removed and used as habitable area on second floor, and
- n. Position of the main entrance gate found changed.

Each of these works, by the MCGM's own admission, was a completed work; there is no case, and none is borne out by the material relied upon by the MCGM, that any of these works was an ongoing work. These works were found as beyond approved B.C.C. Plan dated 7<sup>th</sup> March,1979. If these works were beyond the approved Building Completion Certificate Plan of 7<sup>th</sup> March,1979 and were found at the date of the inspection, i.e. on 5<sup>th</sup> September, 2020, that means they could have been carried out anytime between 7<sup>th</sup> March,1979 and 5<sup>th</sup> September, 2020. If that is so, there is absolutely no case to proceed under Section 354A and remove them or pull them down.

17.14.3. The materials relied upon by the MCGM in support of its case, including the photographs produced before the Court, do not at all indicate that any of these works were being carried out at the bungalow at the time of issuance of the impugned Notice under Section 354A of the Act. Mere presence of some workmen or some construction debris is no evidence that the works referred to in the impugned

notice were ongoing works.

17.14.4. The object and purpose of Section 354A is stoppage of unauthorized ongoing work (which is described in Section 342) by a notice and its removal, if despite such notice the noticee does not stop the unauthorized ongoing work or produce authorization within twenty-four hours. The purpose is not demolition of unauthorized work already carried out (in contravention of Sections 342 or 347). The State action of demolition of works under Section 354A in the present case, is thus clearly for a purpose not authorized by the Act. There is no reasonable or probable cause or excuse for the State action complained of and it has been carried out, as we shall demonstrate presently, wrongfully and willfully.

17.14.5. We shall deal with the willful part first. As we have seen above, there is a distinction between Sections 351 and 354A of the Act and the two provisions have been judicially analyzed extensively to bring out that distinction. What is more, even the MCGM itself has made it abundantly clear that the two provisions operate in different fields and call for different approaches. As set out hereinabove, the MCGM, in supersession of its earlier instructions, laid down guidelines for the guidance of its staff in its Circular dated 15<sup>th</sup> March, 2012. These guidelines provide for procedure to be followed for action to be taken under Sections 354A and 351 of the Act. At the very outset, even at the cost of repetition it must be pointed out that the guidelines distinguish between two different situations; Part A, which deals with action under Section 354A, contains the procedure to be followed “*for on-going unauthorized*

*construction*”, whilst Part B, dealing with Section 351, is “*For existing unauthorized construction*”. Part A provides for a situation where “*any unauthorized construction is in progress contrary to the provisions of Section 342 and 347 of the 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.*” The concerned officer detecting such work has then to take photographs showing the date and status of the work and prepare a Panchnama / Inspection Report “*of the work in progress*”. He then has to make an entry to that effect in detection register and then prepare a notice under Section 354A of the Act. On the other hand, for existing unauthorized construction, the MCGM staff is mandated to proceed under Section 351, requiring the owner / occupier of unauthorized construction to show within 7 days’ time that the work complained of is “*carried out in accordance with the provisions of Section 337, 342 and Section 347 of the MMC Act*”. The Circular of 15<sup>th</sup> March, 2012, thus, makes it very clear when and how, consistent with the purpose of Section 354A discussed above, the MCGM’s staff should resort to a notice under Section 354A. A deliberate resort to Section 354A, in contravention of the law, the authority of Courts and the MCGM’s own Circular, in the case of an existing unauthorized structure (that is to say, assuming that the structure is unauthorized being beyond approved B.C.C. plan of the building), can only be described as willful.

17.14.6. Coming now to the wrongfulness of the State action, it is important to note at the outset that anything which is not authorized by law and which

infringes a citizen's rights is wrongful on the part of the State. As we have seen above, assuming that the subject structures were illegal and amounted to unauthorized works as per Sections 342 and 347 of the Act, it was the Petitioner's right to show cause why they should not be removed, altered or pulled down. Even after passing of a final Order for removal, alteration or pulling down of these works, upon her failure to show sufficient cause, it was open to the Petitioner to approach the MCGM for regularization of such works under Section 53(3) of the MRTP Act or alternatively, approach the Court for preventing the threatened action. To the extent she was prevented from doing so, the action of the MCGM in taking precipitate steps under Section 354A, as we have noted above, can only be described as wrongful. But what really aggravates the wrongfulness and lends further credence to the case of malice in law, is the manner in which the whole action was carried out as we have described above.

17.14.7. The manner in which the action was carried out, as we have noted above, leaves hardly any manner of doubt that the purpose for using the provision of Section 354A in the instant case was not only unauthorized, considering the distinction between Sections 351 and 354A, but more sinister than that, namely, to prevent the Petitioner from taking recourse to her legal remedies. The whole attempt on the part of the Respondent - MCGM and its officers was to somehow present the Petitioner with a *fait accompli*, leaving her practically no time to seek redressal of her grievance through Courts by means of preventive action.

17.14.8. That sums up the case against the Respondents of malice in law. The MCGM, which is an organ of the State, has done something “without lawful excuse”; it has proceeded to act “wrongfully and willfully without reasonable or probable cause”; its act can only be described as a deliberate act in disregard of the rights of a citizen; the true object of the act clearly appears to be to reach an end different from the one for which the power was entrusted to it. The exercise of power can be summed up as bad in law and lacking in bonafides. It is nothing but malice in law.

**18. Maintainability of the Writ Petition :**

18.1. The MCGM at the stage of sur-rejoinder raised the contention that the Writ Petition ought not to be entertained and the Petitioner should be relegated to the remedy of a Civil Suit. It is also submitted that since several disputed questions of facts arise in the present matter, the Writ Petition should not be entertained. It was contended by MCGM that a Civil Suit is the norm and the entertaining of a Writ Petition can only be in exceptional circumstances which according to MCGM, the Petitioner has not made out. Reliance was placed by MCGM in support of this contention on the judgment of this Court in the case of *Abdul Karim Ahmed Mansoori v/s. Municipal Corporation of Greater Mumbai* (supra).

18.2. According to the Petitioner, the contention of maintainability of the Writ Petition raised at a belated stage is clearly an afterthought. It is submitted that it is apparent that on the wrongdoings of MCGM standing exposed and finding no defence

on merits, MCGM has raised this issue only in an attempt to deprive the Petitioner of her legitimate rights and remedies.

18.3. It is also submitted on behalf of the Petitioner that there are no disputed questions of facts as alleged by the MCGM. The facts of the case are clearly established from the documents on record including the photographs produced by the MCGM itself. It is apparent from the pleadings when seen in light of the record that the MCGM has merely raised certain contentions only in an attempt to create dispute when, in fact, none exist.

18.4. We have perused Section 515A of the Act which incorporates a bar of jurisdiction and provides that any notice issued, Order passed or direction issued by the designated officer, under Sections 351 or 354A shall not be questioned in any Suit or legal proceedings. The constitutional validity of this provision was challenged before this Court (Coram: Dr. D.Y. Chandrachud J as he then was and S. C. Gupte J) in the case of *Abdul Razzaq Sunesra v/s. MCGM* (supra). A Division Bench of this Court after analyzing the scheme of the Act upheld the validity of the provision and held that a remedy of a Petition under Article 226 of the Constitution of India is available to the Petitioner.<sup>40</sup> The Court held that Section 515A was intended to ensure that proceedings arising out of Sections 351 and 354A do not get lost in the maze of dilatory remedies in Civil Court.<sup>41</sup> Thus, it is clear that in a case of proceedings arising out of Sections 351 and 354A of the Act, a Writ Petition is the norm and a Civil Suit is

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40 Paragraph 21

41 Paragraph 19

an exception, only in certain limited circumstances. As correctly pointed out by the learned Senior Advocate for the Petitioner, the judgement relied upon by MCGM in the case of *Abdul Karim Ahmed Mansoori* (supra) merely carved out certain very limited circumstances in which the jurisdiction of a Civil Court can still be invoked. In that case, the Petitioner had filed a Suit and his application for ad-interim relief was declined. The Petitioner filed an Appeal from Order which was also withdrawn. While the Suit was still pending, the Petitioner filed a Writ Petition challenging the same action. It was in these circumstances that the Court relegated the Petitioner in that case to a Suit and held that in certain situations, the jurisdiction of a Civil Court could still be invoked. The Court, however, categorically held in paragraph 10 that while entertaining a Suit, the Civil Court is obliged to take note of the statutory bar and to consider the maintainability of the Suit on the basis of the averments in the plaint.<sup>42</sup> The said judgment in no manner lays down any proposition that in every situation, the Petitioner should be relegated to the remedy of a Suit.

18.5. In any case, it is settled law as held by the Supreme Court in a catena of decisions that the availability of an alternative remedy is only a self-imposed restraint and not any bar on the jurisdiction of the High Court in exercising its jurisdiction under Article 226 of the Constitution of India. The Supreme Court has held that the High Court is justified in exercising its powers to the exclusion of all other remedies when it finds that the action of the State or its instrumentality is arbitrary and

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42 Paragraph 10

unreasonable and as such violative of Article 14 of the Constitution of India. We have reached a categorical conclusion, as discussed above, that the action of the State is arbitrary and unreasonable and informed by malice in law. So far as this conclusion is concerned, in the present case in view of the clear facts and evidence made available before this Court, no disputed question of facts can be said to have arisen. Secondly, merely because disputed questions of facts arise, a party cannot be relegated in every such case to a lengthy, dilatory and expensive process of a Civil Suit against a public body, particularly if the action is highhanded and illegal. In fact, the Courts have frowned upon public bodies raising such contentions and held that State instrumentalities ought not to raise technical pleas to defeat the rights and legitimate claims of a citizen.

18.6. In *ABL International v/s. Export Credit* (supra) the Supreme Court held as follows:

*“8. As could be seen from the arguments addressed in this appeal and as also from the divergent views of the two courts below, one of the questions that falls for our consideration is whether a writ petition under Article 226 of the Constitution of India is maintainable to enforce a contractual obligation of the State or its instrumentality, by an aggrieved party.”*

*9. In our opinion this question is no more res integra and is settled by a large number of judicial pronouncements of this Court. In K.N. Guruswamy v. State of Mysore [AIR 1954 SC 592: (1955) 1 SCR 305] this Court held: (AIR pp. 595-96, para 20)*

*“20. The next question is whether the appellant can complain of this by way of a writ. In our opinion, he could have done so in an ordinary case. The appellant is interested in these contracts and has a right under the laws of the State to receive the same treatment and be given*

*the same chance as anybody else. ...*

*We would therefore in the ordinary course have given the appellant the writ he seeks. But, owing to the time which this matter has taken to reach us (a consequence for which the appellant is in no way to blame, for he has done all he could to have an early hearing), there is barely a fortnight of the contract left to go. ... A writ would therefore be ineffective and as it is not our practice to issue meaningless writs we must dismiss this appeal and leave the appellant content with an enunciation of the law.”*

**10. It is clear from the above observations of this Court in the said case, though a writ was not issued on the facts of that case, this Court has held that on a given set of facts if a State acts in an arbitrary manner even in a matter of contract, an aggrieved party can approach the court by way of writ under Article 226 of the Constitution and the court depending on facts of the said case is empowered to grant the relief. This judgment in *K.N. Guruswamy v. State of Mysore* [AIR 1954 SC 592: (1955) 1 SCR 305] was followed subsequently by this Court in the case of *D.F.O. v. Ram Sanehi Singh* (1971) 3 SCC 864] wherein this Court held: (SCC p. 865, para 4)**

*(emphasis supplied)*

*“By that order he has deprived the respondent of a valuable right. We are unable to hold that merely because the source of the right which the respondent claims was initially in a contract, for obtaining relief against any arbitrary and unlawful action on the part of a public authority he must resort to a suit and not to a petition by way of a writ. In view of the judgment of this Court in *K.N. Guruswamy* case [AIR 1954 SC 592 : (1955) 1 SCR 305] there can be no doubt that the petition was maintainable, even if the right to relief arose out of an alleged breach of contract, where the action challenged was of a public authority invested with statutory power.”*

...

**16. A perusal of this judgment though shows that a writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be entertained by a court in the exercise of its jurisdiction under Article 226 of the Constitution of India. This decision again, in our opinion, does not lay down an absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a civil suit. In this view of ours, we are**

*supported by a judgment of this Court in the case of Gunwant Kaur v. Municipal Committee, Bhatinda (1969) 3 SCC 769] where dealing with such a situation of disputed questions of fact in a writ petition this Court held: (SCC p. 774, paras 14-16)*

*(emphasis supplied)*

*“14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit-in-reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. **The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.***

*(emphasis supplied)*

*15. From the averments made in the petition filed by the appellants it is clear that in proof of a large number of allegations the appellants relied upon documentary evidence and the only matter in respect of which conflict of facts may possibly arise related to the due publication of the notification under Section 4 by the Collector.*

*16. In the present case, in our judgment, the High Court was not justified in dismissing the petition on the ground that it will not determine disputed question of fact. The High Court has jurisdiction to determine questions of fact, even if they are in dispute and the present, in our judgment, is a case in which in the interests of both the parties the High Court should have entertained the petition and called for an affidavit-in-reply from*

***the respondents, and should have proceeded to try the petition instead of relegating the appellants to a separate suit”***

*(emphasis supplied)*

**17. The above judgment of Gunwant Kaur (1969) 3 SCC 769] finds support from another judgment of this Court in the case of Century Spg. and Mfg. Co. Ltd. v. Ulhasnagar Municipal Council [(1970) 1 SCC 582] wherein this Court held: (SCC p. 587, para 13)**

*“Merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the somewhat lengthy, dilatory and expensive process by a civil suit against a public body. The questions of fact raised by the petition in this case are elementary.”*

**19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Gunwant Kaur [(1969) 3 SCC 769] this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.”**

*(emphasis supplied)*

**27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:**

**(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.**

**(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.**

**(c) A writ petition involving a consequential relief of monetary claim is also maintainable.”**

*(emphasis supplied)*

*28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1]) **And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.***

*(emphasis supplied)*

18.7. In *Popatrao Patil V/s. State of Maharashtra* (supra), this Court declined to entertain a writ petition on the ground that there were disputed questions of facts and relegated the Petitioner to a Civil Suit. Setting aside the said decision and requiring the High Court to consider the matter on merits, the Supreme Court held thus:

*“11.) No doubt that, normally, when a petition involves disputed questions of fact and law, the High Court would be slow in entertaining the petition under Article 226 of the Constitution of India. **However, it is a rule of self-restraint and not a hard and fast rule.** In any case, this Court in *ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.*<sup>1</sup> has observed thus:*

*“19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of *Gunwant Kaur* [(1969) 3 SCC 769] this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This*

*clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact.”*

**12.)** *While summing up the conclusions in the aforesaid case, this Court concluded thus:*

*“27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:*

*(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.*

*(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule. (c) A writ petition involving a consequential relief of monetary claim is also maintainable.*

*28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corpn.v.Registrar of Trade Marks [(1998) 8 SCC 1].) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.”*

**13.)** *It could thus be seen, that even if there are disputed questions of fact which fall for consideration but if they do not require elaborate evidence to be adduced, the High Court is not precluded from entertaining a petition under Article 226 of the Constitution. However, such a plenary power has to be exercised by the High Court*

*in exceptional circumstances. The High Court would be justified in exercising such a power to the exclusion of other available remedies only when it finds that the action of the State or its instrumentality is arbitrary and unreasonable and, as such, violative of Article 14 of the Constitution of India. In any case, in the present case, we find that there are hardly any disputed questions of facts.*

*(emphasis supplied)*

..

16.) *This Court, has time and again held, that the State should act as a model litigant. In this respect, we can gainfully refer to the following observations made by this Court in Urban Improvement Trust, Bikaner v. Mohan Lal [2](#):*

*“6. This Court has repeatedly expressed the view that Governments and statutory authorities should be model or ideal litigants and should not put forth false, frivolous, vexatious, technical (but unjust) contentions to obstruct the path of justice. We may refer to some of the decisions in this behalf.*

*7. In Dilbagh Rai Jarry v. Union of India [(1974) 3 SCC 554 : 1974 SCC (L&S) 89] this Court extracted with approval the following statement [from an earlier decision of the Kerala High Court (P.P. Abubacker case [Ed.: P.P. Abubacker v. Union of India, AIR 1972 Ker 103 : ILR (1971) 2 Ker 490 : 1971 Ker LJ 723], AIR pp. 107-08, para 5)]: (SCC p. 562, para 25)*

*“25. ... ‘5. ... The State, under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, Government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The layout on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in*

*which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic showdowns where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of Government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957.’”*

8. *In Madras Port Trust v. Hymanshu International [(1979) 4 SCC 176] this Court held: (SCC p. 177, para 2)*

*“2. ... It is high time that Governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a Government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a Government or a public authority, unless of course the claim is not well founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable.”*

*“9. In a three-Judge Bench judgment of Bhag Singh v. UT of Chandigarh [(1985) 3 SCC 737] this Court held: (SCC p. 741, para 3)”*

*“3. ... The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably be prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen.”*

*(emphasis supplied)*

18.8. In *Century Spinning and Manufacturing Company v/s. Ulhas Nagar Municipal Council* (supra) the Supreme Court held that merely because a question of fact is raised the High Court should not require the party to seek **reliefs** by the

somewhat dilatory, lengthy and expensive process of a Civil Suit against public body particularly when questions of facts are elementary. The Court is not incompetent to decide an issue of fact which can be determined from the material on record. It held as follows:

*“8.) The High Court may, in exercise of its discretion, decline to exercise its extraordinary jurisdiction under Article 226 of the Constitution. But the discretion is judicial if the petition makes a claim which is frivolous, vexatious, or prima facie unjust, or may not appropriately be tried in a petition invoking extraordinary jurisdiction, the Court may decline to entertain the petition. **But a party claiming to be aggrieved by the action of a public body or authority on the plea that the action is unlawful, high-handed, arbitrary or unjust is entitled to a hearing of its petition on the merits.** Apparently the petition filed by the Company did not raise any complicated questions of fact for determination, and the claim could not be characterised as frivolous, vexatious or unjust. **The High Court has given no reasons for dismissing the petition in limine, and on a consideration of the averments in the petition and the materials placed before the Court we are satisfied that the Company was entitled to have its grievance against the action of the Municipality, which was prima facie unjust, tried.**”*

*(emphasis supplied)*

..

*“13.) Mr Gokhale appearing on behalf of the Municipality urged that the petition filed by the Company apparently raised questions of fact which in the view of the High Court could not appropriately be tried in the exercise of the extraordinary jurisdiction under Article 226. But the High Court has not said so, and on a review of the averments made in the petition this argument cannot be sustained. **Merely because a question of fact is raised, the High Court will not be justified in requiring the party to seek relief by the somewhat lengthy, dilatory and expensive process by a civil suit against a public body. The questions of fact raised by the petition in this case are elementary.**”*

*(emphasis supplied)*

18.9 In *Sayed Maqbool Ali V/s. State of U.P.* (supra) the Supreme Court held

thus:

*“9.) The remedy of a landholder whose land is taken without acquisition is either to file a civil suit for recovery of possession and/or for compensation, or approach the High Court by filing a writ petition if the action can be shown to be arbitrary, irrational, unreasonable, biased, mala fide or without the authority of law, and seek a direction that the land should be acquired in a manner known to law. The appellant has chosen to follow the second course. The High Court was not, therefore, justified in dismissing the writ petition on the ground that the remedy was under Section 18 of the Act. The order of the High Court, which is virtually a non-speaking order, apparently proceeded on the basis that the appellant was seeking increase in compensation for an acquired land. The matter therefore, requires to be reconsidered by the High Court, on merits.”*

*10.) But that does not mean that the delay should be ignored or the appellant should be given relief. In such matters, the person aggrieved should approach the High Court diligently. If the writ petition is belated, unless there is good and satisfactory explanation for the delay, the petition will be rejected on the ground of delay and laches. Further the High Court should be satisfied that the case warrants the exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India, and that the matter is one where the alternative remedy of suit is not appropriate. For example, if the person aggrieved and the State are owners of adjoining lands and the claims that the State has encroached over a part of his land, or if there is a simple boundary dispute, the remedy will lie only in a civil suit, as the dispute does not relate to any high-handed, arbitrary or unreasonable action of the officers of the State and there is a need to examine disputed questions relating to title, extent and actual possession. But where the person aggrieved establishes that the State had high-handedly taken over his land without recourse to acquisition or deprived him of his property without authority of law, the landholder may seek his remedy in a writ petition.”*

*11.) When a writ petitioner makes out a case for invoking the extraordinary jurisdiction under Article 226 of the Constitution, the High Court would not relegate him to the alternative remedy of a civil court, merely because the matter may involve an incidental examination of disputed questions of facts. The question that will ultimately weigh with the High Court is this: whether the person is seeking remedy in a matter which is primarily a civil dispute to be*

*decided by a civil court, or whether the matter relates to a dispute having a public law element or violation of any fundamental right or to any arbitrary and high-handed action. (See the decisions of this Court in ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd. [(2004) 3 SCC 553] and Kisan Sahkari Chini Mills Ltd. v. Vardan Linkers [(2008) 12 SCC 500])”*

*(emphasis supplied)*

18.10. We are of the view, that this well settled law, when applied to the facts of the present case, makes it apparent that the objection as to the maintainability of the Writ Petition is clearly an afterthought, in order to defeat the Petitioner’s rights. The Petitioner is aggrieved by an ex-facie illegal, arbitrary, unjustified and highhanded and malafide action of MCGM ignoring statutory provisions and guidelines of the Courts as well as of its own Circulars and the said action is an abuse of power and authority. The Petitioner therefore is fully justified in approaching this Court for redressal of her grievances and the protection of her rights.

**19. Reliefs sought :**

19.1. It is submitted on behalf of the Petitioner that the impugned notice, Order and the action of demolition being ex-facie illegal the same ought to be set aside; the Petitioner ought to be permitted to take such steps as are required to make the premises habitable so that the Petitioner can immediately start occupying and using the said premises. As regards the restoration of the demolition work, it is submitted that the Petitioner be allowed to take such steps as this Court may deem fit and proper

in accordance with law, under the supervision of the Court. It is also submitted that the Petitioner is also entitled to compensation to make good the loss and damage caused to the Petitioner as a result of the illegal and highhanded action of MCGM. This aspect is dealt with hereunder.

19.2. As regards the reliefs pertaining to payment of compensation by the MCGM to the Petitioner in the case of *MCGM v/s. Sunbeam Hightech Developers*, (supra), the Supreme Court held that where demolition work is done illegally, even if the structure was unauthorized, compensation can be awarded by the Court. The Court observed as under:

*“18.) We make it clear that we do not approve the action of the Municipal Corporation or its officials in demolishing the structures without following the procedure prescribed by law, but the relief which has to be given must be in accordance with law and not violative of the law. If a structure is an illegal structure, even though it has been demolished illegally, such a structure should not be permitted to come up again. If the Municipal Corporation violates the procedure while demolishing the building but the structure is totally illegal, some compensation can be awarded and, in all cases where such compensation is awarded the same should invariably be recovered from the officers who have acted in violation of law. However, we again reiterate that the illegal structure cannot be permitted to be re-erected.”*

*(emphasis supplied)*

19.3. In *United Air Travel Services V/s. Union of India*<sup>43</sup> the Supreme Court held thus:

*“14.) The principles of damages in public law have to, however, satisfy certain tests. In Nilabati Behera v. State of Orissa [Nilabati Behera v. State of Orissa, (1993) 2 SCC 746: 1993 SCC (Cri) 527], it was observed that public law proceedings serve a different purpose than private law proceedings. In that context, it was observed as under: (SCC pp. 768-79, para 34)*

*“34. The purpose of public law is not only to civilise public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting “compensation” in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making “monetary amends” under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of “exemplary damages” awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation*

***under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.”***

*(emphasis supplied)*

*It was also emphasised that it is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation in exercise of writ jurisdiction. The objective is to ensure that public bodies or officials do not act unlawfully. Since the issue is one of enforcement of public duties, the remedy would be available under public law notwithstanding that damages are claimed in those proceedings.”*

*“15.) The aforesaid aspect was, once again, emphasised in Common Cause v. Union of India [Common Cause v. Union of India, (1999) 6 SCC 667 : 1999 SCC (Cri) 1196]. We may also usefully refer to N. Nagendra Rao & Co. v. State of A.P. [N. Nagendra Rao & Co. v. State of A.P., (1994) 6 SCC 205 : 1994 SCC (Cri) 1609] qua the proposition that the determination of vicarious liability of the State being linked with the negligence of its officer is nothing new if they can be sued personally for which there is no dearth of authority.”*

*16.) In the facts of the present case, the arbitrariness and illegality of the action of the authority is writ large. The petitioners have been deprived of their right to secure the quota on a patently wrongful order passed for reasons, which did not apply to them and for conditions, which had been specifically exempted. What could be a greater arbitrariness and illegality? Where there is such patent arbitrariness and illegality, there is consequent violation of the principles enshrined under Article 14 of the Constitution of India. The facts of the present case are, thus, undoubtedly giving rise to the satisfaction of*

*parameters as a fit case for grant of compensation.*

*17.) On a conspectus of the aforesaid facts including the number of pilgrims for whom the petitioners would have been entitled to arrange the Haj pilgrimage, an amount of Rs 5 lakhs per petitioner would be adequate compensation for the loss suffered by them and subserve the ends of justice. We are conscious of the fact that there is no quantification based on actual loss, but then the award by us is in the nature of damages in public law.”*

19.4. As we have come to a clear conclusion that the impugned notice under Section 354A of the Act and the action of demolition following it, are actuated by malafides, in any event, involve a clear malice in law, causing a substantial injury to the Petitioner, we would be perfectly justified, on the basis of the law stated by the Supreme Court in the case of ***Sunbeam Hightech Developers*** (supra), to order compensation against responsible Respondents. Any such Order must be preceded by an estimate prepared by an approved valuer of the damage caused to the Petitioner’s property. We would therefore have a valuer appointed for the purpose of preparing such estimate. Both parties, i.e. the Petitioner and the MCGM, shall be heard by the valuer whilst making his report of valuation. We would reserve our further Orders on such report being submitted by the valuer. We would also pass appropriate Orders on recovery of any part of such compensation from individual officers of the MCGM when ordering for payment of such compensation.

19.5. As regards allowing the Petitioner to reconstruct demolished portions of the property, we record that though parties have taken contrary positions about the authorized or unauthorized offending portions, we have not been shown any material to justify either of the contentions. We have, accordingly no occasion to decide one way or the other. We must accordingly leave the parties to their positions in law. If, and to the extent the demolished portions were originally created / constructed in accordance with law, that is to say, either as tenantable repairs for which no permission of MCGM was required, or simply matters of interior decoration and work for which no planning permission is required, or were authorized having regard to the approved plans, the Petitioner shall be within her rights to reconstruct the same. In case they require a planning permission and none exists, the Petitioner may apply for such permissions and the MCGM shall be bound to deal with such application in accordance with law.

**20. Reliefs granted :**

Based on the foregoing observations, and being convinced that the impugned notice dated 7<sup>th</sup> September, 2020 and the impugned speaking Order of demolition dated 9<sup>th</sup> September, 2020 issued / passed by Shri Late / MCGM deserves to be quashed and set aside, the following Order is passed:

(i) The impugned notice dated 7<sup>th</sup> September, 2020 alongwith the speaking Order of demolition dated 9<sup>th</sup> September,2020 are quashed and set

aside.

(ii) The Petitioner is allowed to take such steps as are required to make the said bungalow habitable so that the Petitioner can immediately start occupying and using the same. However, to the extent any demolished portion requires a planning permission and such permission is not in place reconstruction of such portion can only be made either in compliance with the sanctioned plan or after seeking approval of the MCGM for the work proposed. In the event any application is made, the MCGM shall decide the same within a period of four weeks from the date of receipt of such application / plan.

(iii) As regards the area, which is not demolished by the MCGM, if the MCGM proposes to take any action, it may issue a notice giving 7 days time to the Petitioner to respond to / comply with the same. In the meantime, the Petitioner shall also be at liberty to make an application seeking regularization of the works already carried out but not demolished under Section 53 (3) of the MRTP Act, 1966. In case any such application is made no further steps in response to the notice shall be taken by the MCGM before disposal of such application and a copy of the Order provided to the Petitioner as well as her Advocate.

(iv) M/s. Shetgiri and Associates, Architects, Engineers, Interior Designers and Valuers are appointed as the Surveyors / Valuers to value and determine the extent and value of damage and loss caused to the Petitioner and

submit their report to this Court on 9<sup>th</sup> March, 2021 to enable the Court to award compensation to the Petitioner. The Surveyors / Valuers shall hear both parties i.e. the Petitioner and the MCGM before making their report. The charges of the Surveyors / Valuers shall initially be borne by the Petitioner.

- (v) Liberty to the parties to apply in case of any difficulty.
- (vi) The Writ Petition to appear for further Orders on 9<sup>th</sup> March, 2021.

**(RIYAZI. CHAGLA, J.)**

**(S.J.KATHAWALLA, J.)**