IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 810 OF 2019
WITH
NOTICE OF MOTION NO. 31 OF 2019
WITH
CHAMBER SUMMONS NO. 51 OF 2019
IN
WRIT PETITION NO. 810 OF 2019

Uttam Mannulal Kale
Age 80 years, Occu. Retired, Residing at Flat No.802, 8th Floor, Bullet Building, Hindu Colony, Dadar (East), Mumbai 400 014. .. Petitioner

Versus

1. The State of Maharashtra
Through Urban Development Department, Mantralaya, Mumbai 400 032.

2. The Municipal Commissioner, Greater Mumbai Municipal Corporation, Mumbai

3. The Asst. Engineer (B & F).
F/N Ward, 96, Bhau Daji Road, Matunga, Mumbai 400 019.

4. The Assistant Engineer
Building Proposal City, Antop Hill, Mumbai 400 037. .. Respondents

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Mr. Chirag Mody a/w Mr. Sanket Jain, Mr. Sandhya Yadav i/by Mr. Ashok Purohit and Co., for the Petitioner.

Mr. Ashutosh Gavnekar a/w Mr. Prakash Chavhan & Ms. Jyoti Mhatre i/by Ms Komal Panjabi, for the Respondent-M.C.G.M.

Mr. Milind More, Addl.G.P., for the Respondent- State.

Mr. Swaraj Jadhav, for the Intervenor/Applicant.

Mr. Amrut M. Vernekar, for Intervenor/Applicant Nos. 2 to 5 in the Notice of Motion.
Mr. Ghadge, A/E (B & F) F/N ward, M.C.G.M. is present in Court.

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CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.

DATED : 8th JULY, 2026.

Judgment [Per Manjusha Deshpande, J.]:-

1. In the instant Writ Petition, the Petitioner seeks to challenge the order dated 10.10.2018, passed pursuant to the notice issued by Respondent No. 3, dated 29.08.2018. A notice under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 (for short "the MRTP Act, 1966") calling upon the Petitioner to remove the wooden door blocking entry to the terrace reserved as refuge area with B.M. Wall and also making entry to the terrace from the adjoining Flat No. 802 has been issued by Respondent No.3- the Assistant Engineer (B & F) F/North Ward, Mumbai. On receiving the reply of the Petitioner to the impugned notice, an order has been passed on 10.10.2018, informing the Petitioner that, since the Petitioner has not removed the irregularities and failed to submit a 'no

action pending certificate' from the Assistant Commissioner F/North ward, the proposal will be deemed to be considered as recorded without further information. Being aggrieved by the notice dated 29.08.2018 and the order dated 10.10.2018, the Petitioner has approached this Court challenging both.

2. The Petitioner is a Senior Citizen and retired Deputy Commissioner of Police (an IPS officer). He is occupying Flat No. 802 of 'Bullet Co-operative Housing Society', registered under the Maharashtra Co-operative Societies Act, 1960. The Petitioner and other gazetted police officers got a plot of land bearing No.2/802/10, situated at L.N. Road, Hindu Colony, Dadar (East), Mumbai, sanctioned from the BMC for the residence of the police officers, with the approval of Respondent No. 2. The land has been allotted on lease basis for a period of 30 years. Following the approval, 26.1 meter tall, 8-storied building was constructed on the said land. The Petitioner along with one more person, namely, Mr. Sudhakar S. Suradkar is occupying Flat Nos. 801 and 802, respectively, on the 8th floor of the building in respect of which, the notice has been issued to the Petitioner.

3. Mr. Chirag Mody, learned counsel representing the Petitioner submitted that, the Petitioner is the chief promoter and founder member of the society. Since inception, he is an active member of the Society and instrumental in executing the development work of the building of the Society. Once having obtained the land for construction of residence for the police officers and forming of the society, the Petitioner was appointed as a Chairman for a considerable length of time. The Society appointed one M/s. Chawla Architects, who prepared and submitted the building plans for the approval of the Chief Fire Officer (CFO) of the Fire Brigade, i.e. Respondent No. 2.

4. It is submitted that, M/s. Chawla Architects prepared a plan for the construction of the building and submitted it for the approval of the BMC. The plan was sanctioned on 30.08.1995, showing eight floors with refuge area above the 8th floor. There were pocket area created on the 3rd and 4th floor as well as adjacent to the 8th floor of the flats, which were denoted as terrace.

5. It is submitted that, NOC by the fire department has been specifically granted stating that, considering the building

permission is granted for eight floors, the terrace on the top floor of building would be treated as refuge area, and the fire fighting devices were to be installed on the terrace of the 8th floor.

6. It is submitted that the NOC was granted by the Fire Department on 20.10.1995, with a condition that the terrace on the top floor of the building, was to be used as refuge area, for which, the Society has also paid Rs.20,000/- to the BMC. Thus, according to him, till date, the terrace area above the 8th floor, is being maintained as refuge area. It is submitted that, the occupation certificate has been granted to the Society on 24.04.1999 and, accordingly, the respective flat holders are in occupation of their respective tenements since 01.05.1995.

Mr. Mody by drawing our attention to the Resolution dated 10.09.1996 passed by the Society would submit that, considering the efforts taken by the Petitioner for procurement of land and completion of the construction work of the building and considering his seniority in acknowledgment of his efforts, the Society passed a resolution on 10.09.1996, granting permission to use and occupy the terrace adjoining their flats to the Petitioner as well as one Mr.

Suradkar, as they were occupying Flat Nos. 802 and 801 respectively.

7. It is submitted that, the Fire Department allowed the terrace above the 8th floor of the building to be utilized as, 'refuge area' with a condition that, the Society should observe norms of fire safety measures and maintain the fire fighting equipments, so installed in a good condition. He would therefore submit that, the disputed terrace area occupied by the Petitioner was never shown or treated as, 'refuge area'. In fact, as per the NOC dated 20.10.1995, issued by the Fire Department, the terrace above the 8th floor of the building has been treated as refuge area. Even in the revised sanction plan dated 20.10.1995 and 30.08.1995, the pocket terraces area occupied by the Petitioner has not been shown as, 'refuge area'. The amended plans and the revised sanction plans, without changing the status of the terrace of 8th floor, has been granted permission and duly approved by the Fire Department.

Mr. Mody, further submitted that, the terrace adjacent to Flat Nos. 801 and 802 respectively, are not 'refuge area'. They have never been approved as, 'refuge areas' in the sanctioned

plan or even in the revised plan. The Society itself has allotted possession of the said adjacent terrace to the Petitioner, of which he is in occupation since taking possession of the said flat. He would submit that, without any authority or intimation to the Society, the newly appointed Architect modified the completion plan, marking the pocket terraces on the 8th floor as 'refuge area'. Such modified plan did not have the approval/NOC of the Chief Fire Officer. According to Mr. Mody, since the height of the building is only 26.1 meters, the provision for 'refuge area' on the terrace above the 8th floor is sufficient.

8. It is submitted that, following a complaint by some of the members of the Society, alleging misuse of the pocket terraces, occupied by the Petitioner and one Mr. Suradkar, a notice has been issued under Section 488 of the Mumbai Municipal Corporation Act, 1888, to the Petitioner requiring a site inspection. In furtherance thereto, Respondent No. 3 and one sub-Engineer of the corporation visited Flat No. 802 to conduct the inspection. After their visit, a notice has been issued to the Petitioner, calling upon him to remove the obstruction to the terrace, which is allegedly reserved as refuge area. He has filed a detailed reply supported with requisite documents,

requesting to drop the notice.

9. It is submitted that in response to the notice the Petitioner has preferred an Application/Appeal under Section 55 of the MRTP Act, 1966, before the Respondent No. 4 through his Architect. However, without affording any hearing to the Petitioner, an order has been passed informing the Petitioner that the proposal cannot be proceeded for want of compliances, granting 15 days time to submit necessary documents and remove the deficiencies in the proposal, failing which, the same would be disposed of without any further intimation.

10. Although the Petitioner requested further time for producing the necessary documents, which were not available with him, Respondent No.4 refused to grant such time and has gone ahead and filed a complaint against the Petitioner at Matunga Police Station, under Section 53 (7) of the MRTP Act, 1966, being C.R. No. 130 of 2018, hence the present Writ Petition.

11. It is submitted that, initially after hearing the Writ Petition, this Court has granted interim relief to the Petitioner,

staying the further execution of the order dated 10.10.2018, *vide* its order dated 26.11.2018. It is the categorical stand of Mr. Mody that, the Petitioner has been allotted Flat No. 802, with a terrace for his exclusive use and occupation. In support of his claim, he relies on the resolution of the Society passed on 10.09.1995. It is his contention that, the NOC dated 20.10.1995 granted by the Chief Fire Officer of Respondent No. 2, provides that the terrace of the building above the 8th floor will be treated as refuge area, meaning thereby, the terrace adjoining his Flat No. 802 is the pocket area, which has been in his occupation pursuant to the resolution passed by the Society. He would further submit that, after receiving the impugned notice dated 29.08.2018, the Petitioner has requested to clarify about the 'refuge areas', in response to which, the Chief Fire Officer has confirmed on 15.07.2019, that the terrace above the 8th floor is the refuge area.

He would further submit that the glass window between Flat No. 802 and the adjoining terrace is not part of the impugned notice. The impugned notice dated 29.08.2018 does not mention about the existence of a full length glass window, which is existing since construction of the building. In spite of the fact that, during the inspection carried on by Respondent

No.3 on 27.08.2018, the glass window was existing, there was no reference about it made in the impugned notice, calling upon the Petitioner to remove the glass window, hence, now the Petitioner cannot be called upon to remove the said window. As such the impugned notice dated 29.08.2018 and the consequent order dated 10.10.2018 deserves to be quashed and set aside.

12. Mr. Ashutosh Gavnekar, learned counsel appearing for Respondent No. 3 submitted that, a complaint dated 10.08.2018 was received from some of the residents of 'Bullet' building regarding misuse of 'refuge area' by the owners of Flat No. 801 and 802 on the 8th floor of the building. On receiving such complaint, the officer from the office of Respondent No. 3, inspected the site and found that unauthorized construction was carried out in the 'refuge area' by blocking the entry to the terrace, which was reserved as, 'refuge area' with B.M. Wall, which was beyond the sanctioned plan, therefore, a notice under Section 53(1) of the MRTP Act was issued to the owner/occupier.

13. In response to such notice, the owner/occupier of Flat No. 801 of the 'Bullet' building restored the access to the refuge

area by removing the obstruction and opening the access to the terrace and also closed the entry to the refuge area from his flat by constructing the B.M. Wall.

14. On the other hand, the owner/occupier of Flat No. 802 i.e. the Petitioner has approached Executive Engineer (Building Proposal) for regularization of schedule of notice work, through his Architect, however, the said proposal has been rejected by the Executive Engineer on 10.10.2018. On expiry of the notice period, a complaint has been lodged by Respondent No. 3 in the local police station in exercise of his powers under Section 53(7) of the MRTP Act. This affidavit setting out aforementioned facts and updates has been filed by Respondent No. 3 on 18.01.2019.

15. Mr. Jadhav, learned counsel representing the Applicants in support of Notice of Motion No. 31 of 2019 submitted that Applicants and the Petitioner are the original members of the Society of Police Officers. According to him, the Petitioner has been occupying the position of Chairman for about 14 years out of 21 years of the existence of the Society. It is contended that by virtue of his position, the Petitioner, who was in control of administration of the Society, managed to pass resolutions in the meeting of the Managing Committee, ignoring the valid

objections of the other members. According to him, a notice similar to that issued to the Petitioner was issued to the occupant of Flat No. 801, namely, Mr. Suradkar. Occupant of flat No.801 Mr. Suradkar, in compliance of the notice issued to him has removed the obstruction, which was caused by him to the access of the 'refuge area'.

16. According to the intervenors, the Applicants have brought to the notice of Respondent No. 3, that the two open terraces, each admeasuring 1076 sq.ft. adjacent to Flat Nos. 801 and 802, which were earmarked as, 'refuge area' in the final sanctioned plan of the building, have been included by both the flat owners in their respective flats by closing the entry doors of the refuge area from the lobby, by constructing brick walls. And they are using the refuge area as their private terraces, preventing the other members of the Society, access to the said refuge areas. In the event of any fire incidents or emergency it is likely to jeopardize the lives and safety of the members of Society. It is submitted that, taking cognizance of the complaint, notice have been issued to the occupant of Flat Nos. 801 and 802. Though occupant of Flat No. 801 has complied with the said notice, the Petitioner has failed to restore the refuge area and has taken a defiant stand.

It is submitted that, in fact, the Petitioner has not come before this Court with clean hands. He has suppressed that after the impugned order dated 10.10.2018, was passed rejecting his proposal for shifting the 'refuge area' on the terrace above the 8th floor, he had submitted another proposal on 29.10.2018, with the same documents, seeking regularization of the encroached refuge area. Even that proposal has been rejected, vide order dated 30.10.2018. Hence, in view of the rejection of his request for regularization, no interference is called for in the present Writ Petition.

17. Mr. Swaraj Jadhav, learned counsel representing the Intervener (owner and occupant) of Flat No. 801 in Chamber Summons No. 51 of 2019 also submits that, after service of notice on him, he has removed the obstruction as directed in the impugned notice. The Petitioner is also identically placed, hence, the prayer of the Petitioner does not deserve any consideration.

18. We have heard all the parties and we have also perused the documents placed on record.

The controversy in the present Writ Petition pertains to the terrace, which is adjoining the Flat No. 802, possessed by

the Petitioner. The consistent stand of the Petitioner is that, the terrace adjoining his flat is being occupied by him since the construction of the building, and the Managing Committee of the Society itself has passed a resolution and permitted him use of the said terrace, exclusively, in acknowledgment of the efforts taken by the Petitioner for the development of the society.

Although the Petitioner has relied on the resolution of the Society dated 10.09.1996, to contend that he is in exclusive possession of the terrace, pursuant to the resolution of the Society. Upon going through Item No. 10 of the resolution of the Annual General Meeting (for short AGM) of the Society dated 12.08.1999, it is evident that, in acknowledgment of the relentless efforts taken by the Petitioner, along with Mr. Suradkar, they have been allotted the terrace flats. The resolution in no way states that, the Petitioner along with Mr. Suradkar shall be the owner and exclusive possessor of the terrace adjoining their flats. It also needs to be appreciated that, during the course of submission when we inquired with Mr. Mody, learned counsel for the Petitioner, whether the said terrace forms part of the Sale Deed of the Flat No. 802, his answer was in negative. Thus, it

is evident that, the Sale Deed was only to the extent of flat, and the terrace was not included in it. Hence, the reliance placed on the Resolution dated 12.08.1999 passed by the Society would not confer any right on the Petitioner to be in possession of the terrace, which is a 'refuge area' of the Society.

Although the Petitioner has relied on the Minutes of AGM dated 10.09.1996, passed by the Society. Upon going through the minutes of meeting dated 12.08.1999 annexed to the Petition, we find that, when a query was raised at Item No. 10 in the AGM about the terrace adjoining the Flat No. 802 of the Petitioner, one of the Members Mr. Chavan has merely stated that the said issue has already been resolved in the previous AGM and reiterated that the Petitioner has been allotted a terrace flat. Upon finding reference of the previous AGM, we find that a resolution has been passed on 10.09.1996 at Item No. 3, a decision was taken to allot two flats in the proposed building to the Petitioner and Mr. Suradkar as a special case in acknowledgment of efforts taken by them. In this resolution also, we do not find any reference about the terrace attached to the flat being allotted in favour of the Petitioner. This very resolution has been referred in the subsequent AGM dated 12.08.1999. Hence, upon perusal of

the documents placed on record by the Petitioner, we do not find any substance in the contention of the Petitioner that, the Petitioner has been allotted terrace adjoining his flat by the Resolution of the society. Hence, claim of the Petitioner to the terrace adjoining the Flat No. 802, based on Resolution of the Society, clearly appears to be based on Resolutions of the society, which cannot confer any substantive right on the Petitioner.

19. So far as the reliance placed by the Petitioner on the NOC granted by the Fire Department dated 20.10.1995, it is his contention that, the Fire Department has stipulated that since the building is of 8 floors, the terrace of the building will be treated as, 'refuge area' as per the revised norms and guidelines. To be more specific Item No. 11 of the NOC refers to the refuge area and stipulates that, terrace of the building shall be treated as refuge area.

The Petitioner, in his affidavit in rejoinder to the Writ Petition has reiterated that, as per the plan approved by the Fire Department in 1995 and then in 1999, the construction permission provides that, the terrace above 8th floor is the refuge area for the building, which is further confirmed by the

Fire Department in its communication dated 15.07.2019.

On perusal of the communication dated 15.07.2019, we find that, the Chief Fire Officer, has observed in the said order that, at the time of inspection, it was noticed that the NOC is issued by the Fire Department on 20.10.1995, and since the building is ground + eight upper floors only, the 'terrace' was to be treated as, 'refuge area. However, as per the approved plan of the EEBP U/R No. 14685/FN/A dated 18.06.2002, refuge floor is shown on the 8th floor at East side and at the South side of the building, and also there is an open terrace as per plan of the building at 8th floor level, provided on the floor attached to Flat Nos. 801 and 802, at North East side and South side respectively. It was noticed during the inspection that the door attached to open terrace on 8th floor was found to be closed by brick masonry wall, hence, it was recommended that, the part of the terrace on the 8th floor adjacent to flat No. 801 and 802 was to be kept open, and the closed door was to be also kept open. The officers were directed to visit the premises to take necessary action in furtherance of the recommendation.

20. During the course of hearing, the learned counsel for the Respondent has placed on record the communication issued by

the Municipal Corporation of Greater Mumbai dated 17.01.2019, addressed to the Architect of the Petitioner, which reveals that, after the passing of impugned order on 10.10.2018, the Architect of the Petitioner has submitted a proposal for regularisation of the terrace adjoining Flat No. 802, which is approved as 'refuge area' to be regularised as 'terrace'. It is observed that, without complying with the deficiencies mentioned in the impugned communication dated 10.10.2018, the Architect of the Petitioner resubmitted the file online on 29.10.2018, which was rejected on 30.10.2018, directing the Petitioner to comply with conditions in the final plan dated 18.06.2002, but the Petitioner has again submitted the file without complying the necessary condition on 30.11.2018, which came to be rejected on 07.12.2018. Referring to the subsequent proposal dated 17.12.2018, it is observed that, even that proposal has been rejected as per online remarks dated 16.01.2019, since the requirements as per EODB were not complied.

21. Annexed to the said communication dated 17.01.2019, is the note-sheet of the Municipal Corporation in respect of the application of the Petitioner dated 07.10.2018,which discloses that there were remarks on the note sheet on two issues i.e. (i)

unauthorized blocking of the door to the terrace reserved as, ‘refuge area’ with B.M. wall and; (ii) unauthorized making entry to the terrace from the adjoining Flat No. 802, by fixing wooden door.

It is observed that since the terrace adjacent to the 8th floor is approved as, ‘refuge area’ in the sanctioned plan dated 18.06.2002. In reply to the notice, the Architect of the Petitioner has submitted a proposal for approval to consider the terrace adjoining Flat No. 802 which is approved a ‘refuge area’ to be treated as ‘terrace’. On this issue, it is observed that, the NOC by the CFO dated 20.10.1995 states that, ‘terrace of the building will be treated as refuge area’, but, it does not clarify which terrace, i.e. whether the terrace above the 7th floor or the terrace above the 8th floor is to be treated as, ‘refuge area’. While granting the completion certificate, the terrace above the 7th floor was ordered to be used as, ‘refuge area’. Since the Petitioner is well aware about this fact, therefore, he has submitted a proposal through his Architect for granting approval to the ‘refuge area’ adjoining his flat as, ‘terrace’, which has been rejected on more than one occasion for want of necessary supporting documents. From the remarks in the note sheet, it is evident that, for making such

changes from ‘refuge area’ to ‘terrace’, the Resolution of the general body is necessary for effecting such changes in the common area. Although the Architect has requested for relocating the refuge area, it is not supported by specific NOC from the CFO or the resolution of the general body, hence the proposal of the Petitioner has been rejected.

22. From the exchange of communications between the Petitioner and the Municipal Corporation, it is evident that after the issuance of impugned notice dated 29.08.2018, the Petitioner is consistently trying to project that the terrace adjoining to his flat is allotted to him and the refuge area is situated on the terrace above the 8th floor.

Since his response to the notice was not satisfactory an offence came to be lodged against him as provided under Section 53 (7) of the MRTP Act, 1966. After that the petitioner through his architect has again approached the Executive Engineer Building Proposal (City) Wadala, Mumbai on the ground, that the earlier architect has inadvertently made change in the plan by changing the ‘refuge area’ and thereupon calling the authorities to rectify the mistake committed by the architect.

23. The respondent no.3 has placed on record the completion certificate dated 15.07.2002, certifying that the building is constructed as per the approved plan. The approved plan shows the terrace adjoining the flat no. 801 and 802 to be reserved as refuge area. This completion certificate has been certified by the Executive Engineer of the Municipal Corporation of Greater Mumbai ("MCGM" in short).

24. Though the petitioner relies on the NOC of the Chief Fire Officer dated 20.10.1995, to contend that the terrace above 8th floor is the refuge area, but on going through the NOC, we do not find any reference about it. It merely suggests that the terrace of the building will be treated as refuge area. The completion certificate issued by the Executive Engineer MCGM dated 15.07.2002 clearly shows that the two terrace adjoining flat nos. 801 and 802 are the 'refuge areas', which is certified by granting occupation certificate, and the construction is accordingly completed. Thus, whatever, ambiguity was there in the NOC by the Chief Fire Officer dated 20.10.1995 stands clarified in the completion certificate dated 15.07.2002, which is not challenged till date. Mr. Sudhakar Suradkar, who is similarly situated has complied with the conditions in the notice issued to him and has categorically stated that, he has

removed the obstructions made by him to the approach of ‘refuge area’, adjoining his flat No.801.

25. The very fact that the petitioner through his architect has submitted a proposal to regularise the ‘terrace’ adjoining his flat by treating the ‘refuge area’ as ‘terrace’, itself gives rise to the obvious conclusion that, the area adjacent to his flat was approved as refuge area, which has been obstructed by him, and now a request is made to treat it as ‘terrace’ and accordingly he has submitted proposal to the Municipal Corporation.

26. We are not satisfied by the grounds raised by the petitioner seeking interference in the impugned notice dated 29.08.2018 and the consequent order dated 10.10.2018 passed by the Respondent Nos. 2 and 3. The area adjoining Petitioner's flat No. 802, is admittedly not owned by him, neither is it allotted for his exclusive use and possession by the society, as is imperative from the Resolutions of the Respondent–Society.

27. On the basis of the aforementioned facts and the material emerging from the documents placed on record, we are of the

considered view that the petitioner has failed to make out a case warranting interference with the impugned communication or to grant any relief as prayed by the petitioner.

Hence, the Writ Petition stands dismissed being devoid of any merits. Accordingly Chamber Summons and Notice of Motion stand disposed of.

(MANJUSHA DESHPANDE, J.) **(BHARATI DANGRE, J.)**

After pronouncement of the judgment in the open Court, in view of the dismissal of the Writ Petition, the learned counsel for the Petitioner makes a request that, since interim relief granted by this Court vide order dated 26.11.2018 continues to operate till date, this Court may continue the said interim relief for a period of four weeks, so as to enable the Petitioner to approach the Hon'ble Supreme Court. In view of the request made by the learned counsel, we continue the interim relief for a further period of four weeks from today.

(MANJUSHA DESHPANDE, J.) **(BHARATI DANGRE, J.)**

Rajeshri Aher