HC-Order Heritage

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

WRIT PETITION NO.867 OF 2013
WITH
WRIT PETITION NO.1564 OF 2013

Dr.Arun Rghunath Chitale and anr. ..Petitioners.
vs.
State of Maharashtra and ors. ..Respondents.

Mr. Virendra V. Tulzapurkar, Senior Advocate with Phiroze Palkhiwala, Sanjay Kadam and Apeksha Sharma i/by Kadam & Co. for the Petitioners.
Mr. S.S. Joshi, A.G.P. for the Respondent State.
Mr. Shiraj Rustomjee, Senior Advocate i/by Dastur, Dadhich and Kalambi for Respondent No.4 and Respondent No.6 in 1564/2013.
Mr. S.U.Kamdar with Ms. Sharmila Modle for the Respondent-BMC.
Mr. Milind Sathe, Senior Counsel with Mr. Parimal Shroff,Adv.Deokar, Sachin Pandey and Ms. D. Manpe i/by Parimal K. Shroff & Co. in WP No.1564/2013.
Mr. J.G.Reddy, A.G.P .for Respondent State in W.P.No.1654/2013..

CORAM : MOHIT S. SHAH, C.J. AND
M.S. SANKLECHA, J.

DATE : 03 October, 2013

PC:

Since the affidavit in reply is being tendered by the learned Counsel for the Heritage Committee, the learned Counsel for the petitioners prays for time to file rejoinder and prays that ad interim order may be passed.

Similar request is made by the learned Counsel for the petitioner in Writ Petition No.1564 of 2013 filed by Maharashtra Chamber of Housing Industry.

2) In both the petitions, the petitioners have challenged the notice dated 31 July 2012 issued by the Municipal Corporation of Greater Mumbai notifying several sites in the Greater Mumbai as heritage sites along with existing heritage list. The petitioners have also challenged the Circular dated 14 August 2013 issued by the Municipal Corporation of Greater Mumbai prohibiting and directing the concerned officers in the Municipal Corporation to note that new heritage list notice shall be taken into consideration before granting any permission for re-development/demolition/repairs etc. The Circular further reiterates the earlier Circular dated 30 October 2007 that if a property under development is situated within a radius of 100 meters from any heritage building categorized as grade-I building /monument, then NOC from the Heritage Committee shall be obtained prior to approval of plan.

3) Having heard the learned Counsel for the parties for some time and having regard to the fact that the Municipal Corporation is likely to take some time for considering the objections to the proposed new heritage listing, by this ad interim order, it is directed that cases where development permission under Section 43 of the MRTP Act was already granted prior to 31 July 2012, the Circular dated 14 August 2013 shall not be applied. If the development permissin was granted after 31 July 2012 and the building was lawfully demolished before 14 August 2013, the owner of the concerned building may apply to the Municipal Corporation for getting a certificate about the present status of the building. If the Corporation finds that the building was lawfully demolished before 14 August 2013, the Corporation shall consider the

application for commencement certificate.

4) It is clarified that we have not granted any stay against the operation of the earlier Circular dated 30 October 2007.

5) It is also clarified that the pendency of the writ petitions or this order do not preclude the Municipal Corporation from considering the objections against the proposed new heritage listing. The Municipal Corporation shall submit report to the State Government after considering the objections to the proposed heritage listing of precincts near Shivaji Park within six weeks from today.

6) The State Government shall file affidavit in reply by 24 October 2013. Rejoinder, if any, shall be filed by the respondents by 18 November 2013.

7) Stand over to 25 November 2013.

CHIEF JUSTICE

M. S. SANKLECHA, J.