

(2011) 03 BOM CK 0222

In the Bombay High Court

Case No : Writ Petition No. 2177 of 2010

Formac Engineering Ltd. and Another

APPELLANT

Vs

Municipal Corporation of Greater Mumbai and Others

RESPONDENT

Date of Decision : 10-03-2011

Acts Referred:

Bombay Municipal Corporation Act, 1888 — Section 390, 394

Constitution of India, 1950 — Article 226

Mumbai Municipal Corporation Act, 1888 — Section 390, 390(1), 390(2), 390(3), 394

Citation : (2011) 3 ALLMR 135 : (2011) 3 BomCR 610 : (2011) 113 BOMLR 1027 : (2011) 4 MhLj 152

Hon'ble Judges : S.C. Dharmadhikari, J

Bench : Single Bench

Advocate : Aspi Chinoy and M.P.S. Rao, L.A. Rubens, Savita Sadananda and Sujit Suryavanshi, instructed by Vigil Juris, for the Appellant; S.U. Kamdar Trupti Puranik, instructed by V.K. Khatu and Ors. for Respondent Nos. 1 to 3, Virag Tulzapurkar and F. Palkhiwala, instructed by Mahernosh Humranwala, for the Respondent

Final Decision : Allowed

Judgement

S.C. Dharmadhikari, J.—By this petition under Article 226 of the Constitution of India, the Petitioners have claimed the following reliefs:

(a) that this Hon''ble Court be pleased to issue a writ of certiorari or a writ, direction or order in the nature of certiorari or any other appropriate writ, direction or order under Article 226 of the Constitution of India, calling for the records of the Petitioner's case and after considering the same, quashing and setting aside the impugned order dated 21st September 2010;

(b) that this Hon''ble Court be pleased to issue a writ of mandamus or a writ, direction or order in the nature of mandamus or any other appropriate writ, direction or order under Article 226 of the Constitution of India, this Hon''ble Court be pleased to order and direct:

(i) the Respondent Nos. 1, 2 and 3 from in any manner implementing the impugned order dated 21st September 2010;

(ii) restraining the Respondent Nos. 1,2 and 3 from in any manner acting in furtherance of the impugned order dated 21st September 2010;

(iii) the Petitioners from continuing the working and running of the factory in accordance with the factory permit dated 20th May 2008.

2. At the outset, it is clarified that if the Court sets aside the impugned order dated 21st September 2010, the necessary corollary would be that the request which has been turned down would have to be re-considered by the Authorities.

3. A preliminary objection has been raised by Mr. Kamdar, learned senior counsel appearing on behalf of the Respondent Nos.1 to 3 and it is that the impugned order can be questioned by filing an Appeal u/s 394(5) of the Mumbai Municipal Corporation Act, 1888. His submission is that by the impugned order what has been done is to reject the application for renewal of the factory permit bearing No. V-537. If that application for renewal is rejected, then, that order can be challenged by filing appeal before Chief Judge, Court of Small Causes, Bombay.

4. On the other hand, Mr. Chinoy, learned senior counsel appearing on behalf of the Petitioner submits that the remedy of appeal is not available to challenge this order. The petition is filed by alleging that the factory permit dated 20th May 2008 has been revoked. The Petitioners have pointed out that the order has been passed u/s 479(3) of the Mumbai Municipal Corporation Act, 1888. The Petitioners have pointed out in para 4 the nature of their business and have stated that the Petitioners were carrying on business of treating of metal under a licence which was valid up to 31st March 1975. Annexures I and J are referred to in this behalf. The Petitioners pointed out as to how their factory has been located in the premises in their possession, namely, in the area of 18218 sq. ft. The Petitioners have pointed out that the permissions have been granted by the Director of Industries. It has also been pointed out as to how various other approvals have been obtained. There was a factory permit granted in the name of the Petitioner No.1 on 5th December 1970. It was renewed from time to time up to 31st March 1988. It was also in force till the date mentioned in the application for renewal dated 23rd January 2008. This is an application for renewal, a copy of which is annexed as Annexure Z. It is this application pursuant to which various inspections were undertaken. It is pointed out as to how from the year 1968 the business has been carried out. It is in such circumstances that the action of the authorities has been impugned and by alleging that the same is taken at the instance of the private Respondents with whom the Petitioners have a on going dispute.

5. Section 390 of the Mumbai Municipal Corporation Act, 1888 falls under the sub-heading "Regulation of Factories, Trades etc". It states that no person shall newly establish in any premises any factory, work-shop or work place, in which it is intended that power shall be employed without the previous written permission

of the Commissioner, nor shall any person work, or allow to be worked any factory, work-shop or work place without such permission. Sub-Section 2 confers a discretion on the Commissioner to refuse such permission for the reasons mentioned therein. Sub Section 3 of Section 390 reads thus:

390. Factory, etc not to be newly established without permission of the Commissioner:

(1)

(2)

(3) If any written permission for the establishment of factory, workshop or workplace granted under Sub-section (1) be revoked by the Commissioner in the exercise of his powers under Sub-section (3) of Section 479, no person shall continue or resume the working or use of such factory, work shop or work place until such written permission is renewed or a fresh written permission is granted by the Commissioner.

6. Mr. Kamdar has invited my attention to Sub-Section 5 of Section 394 and submits that the provision of appeal therein would apply to the present case. It is not possible to agree with him because Section 394 deals with a distinct situation. It deals with a case where certain articles or animals are being kept and certain trades, processes and operations are being carried on. They shall not be carried on without a licence. The various schedules that are referred to in Section 394(1) regarding which a licence will be necessary and can be granted does not deal with a licence that is contemplated for establishment of any factory, work-shop or work place within the meaning of Section 390(1). Therefore, the provision of an appeal which is provided to challenge any action withholding a licence u/s 394(1) cannot be extended and applied in a distinct situation and to a distinct activity. Unless and until the provision itself is specifically referred to in Section 390, by interpretative process, the same cannot be read into it. For these reasons, the preliminary objection raised by Mr. Kamdar is without any substance and it is over ruled.

7. In the above circumstances, this petition is maintainable and can be entertained. Hence, Rule. The Respondent Nos.1 to 7 waives service. By consent, Rule is made returnable forthwith.

8. By this petition under Article 226 of the Constitution of India, the decision or order passed by the Assistant Commissioner, S-Ward of the Brihanmumbai Mahanagar Palika dated 21st September 2010 is under challenge. By this order the factory permit of the Petitioners has been revoked and the application for renewal thereof submitted by the Petitioners has been rejected.

9. The brief facts leading to the filing of the petition may be narrated now.

10. The Petitioners have stated that the Petitioner No.1 was incorporated and granted registration certificate on 16th December 1968 as a private limited

company. The promoters of the Petitioner No.1 were one Edul J. Havaldar and the Petitioner No.2. In the year 1968 it was represented to the Petitioner No.1 by Mr. Nadirsha Phirozsha and Mr. Fali Bomanjee, the partners of M/s. Nardirsha Phirozsha & Co that they were the owners of a certain structure, namely, Bharthania Industrial Estate. The Petitioner No.1 states that it commenced business on the ground floor of the said structure.

11. It is the case of the Petitioners that in November 1968, the partnership firm leased 3000 sq. ft of the ground floor of the structure alongwith open enclosed plot, open canteen shed and the sub-electrical transformer and that is evidenced by a rent receipt dated 1st September 1972. On 1st January 1971, the Firm entered into a leave and licence agreement with Respondent No.4 for a area of 2400 sq. ft on the ground floor of the structure contiguous to the 3000 sq.ft already in occupation of Petitioner No.1 since 1968. Simultaneously on the very day the Respondent No.4 executed a leave and licence agreement for the same area of 2400 sq.ft on the ground floor in favour of the Petitioner No.1.

12. The subsequent arrangement with regard to construction of the first floor has been then set out in the petition and the writings in that behalf are also referred to. The various portions that were acquired by the Petitioners are set out and it is then stated that the following area constituted the factory of the Petitioners:

Date

Area Cumulative area

Square feet

Names

Floor

01.11.1968

3000

Nadirsha Phirozsha & Co

Ground

01.01.1971

2400

5400

Piloo Fali Bomanjee

Ground

01.01.1973

5275

10675

Dadi Dorabjee

First

01.06.1974

3564

14249

Philoo Falli Bomanjee

Ground

01.06.1974

4402

18641

Nadirsha Phirozsha & Co

First

13. The Petitioners state that there is a no objection certificate for setting up of the factory which has been issued by the land lord. The payment of the property taxes as late as up to February 2009 are referred to and the Beat Officers report so also approval of 1975-76.

14. Thus, it is alleged that Respondent Nos. 2 and 3 were well aware of the fact that the Petitioner No.1 has always been occupying the entire structure. In these circumstances, the acts of one E.J. Havaladar are, then referred to, so also facts of filing of civil suits and appointment of Court Receiver therein are set out.

15. In para 4, Clause (G), pages 14 and 15 of the petition, this is what is alleged:

(G) The land on which the factory structure stands was purchased on 25th February 1964 by late Mr. P.B. Bharthaniya. For the purposes of the business of the Petitioners, the Petitioner No.1 had applied to the Bombay Municipal Corporation u/s 390 of the M.M.C Act for a factory permit in the year 1968. By a letter dated 23rd October 1968, addressed by M/s. J.P. Parekh & Son, the then Architects of the said firm Nadirsha Phirozsha & Co addressed to the Ward Officer, N Ward, Bombay Municipal Corporation, on behalf of the Petitioner No.1 through the promoter Director, Mr. E.J. Havaladar, an application to establish factory in Bharthania Industrial Estate at S. No.26, H. No.4, Kanjur, Bhandup. The said Architect of Nadirsha Phirozsha & Co alongwith the application submitted copies of site plan, location plan for establishing a mechanical workshop and the No Objection Certificate from the Municipal Corporation dated 25th April 1964. It was recorded therein that the Under Secretary, Industry & Labour Department had issued No Objection Certificate dated 17th October

1968. It was also recorded therein that on behalf of then the landlords i.e. Shri. P.B. Bharthania a No Objection Certificate has been issued for establishing and running the proposed factory. In the said letter the Petitioner No.1 through its promoter Director requested for 95.5 kilowatts of power and also pointed out that the necessary application was made to the Director of Industries and as soon as the sanction was received the same would be forwarded to the Ward Officer to peruse and grant the factory permit to the Petitioner No.1

16. The reference then made is to the application for transfer of no objection certificate of the Director of Industries in favour of the Petitioner No.1. Even the electric supply was sought to be transferred and applications made in that behalf are pointed out. The case of the Petitioners is that the factory permit was renewed by Respondent No.1 up to 31st March 1988. The use of power supply and the provision of meter for the same, so also the no objection certificate for use of additional power by the Director of Industries dated 8th January 2008 has been referred to.

17. In para 4(M) of the petition, the Petitioners have set out the details of the application date 23rd January 2008 for renewal of their factory permit. The area mentioned therein is set out together with the necessary no objection certificates and in the same narration, reference is made to the note prepared by the Assistant Engineer, S-Ward dated 16th April 2008 duly approved by the Assistant Commissioner on 23rd April 2008 recording the no objection to grant additional load, additional activity restoration of permit etc. The no objection certificate of the Chief Fire Officer is then referred to together with the further inspection carried out on 9th February 2008 by the Sub-Engineer (Factories), S-Ward of the Municipal Corporation. There is a detailed reference to the approvals and clearances and payment of the requisite charges. The Petitioners, therefore, believed that the factory permit would be renewed as per the applicable policies for five years. However, it is the case of the Petitioners that despite being in uninterrupted possession and carrying on business from 1968, on 21st July 2009 the Petitioner No.2 was summoned by the Assistant Engineer (Buildings and Factories) in connection with the enquiries made on behalf of the Respondent Nos.4 to 7. The enquiry appeared to be about the use and occupation of 4402 sq.ft of the structure which is subject matter of a suit being Suit No.1385 of 1984. The Petitioners in their letter dated 28th July 2009 have set out complete facts with regard to the creation of tenancy rights. By a letter dated 25th August 2009, the Assistant Engineer called upon the Petitioner No.2 to submit certain documents relating to factory permit granted to the Petitioner No.1. The Petitioner No.1 was called upon to submit the documents of ownership, the agreement with the owner, a copy of the approved plan from the Executive Engineer, B and P (E.S.) for the area mentioned in the factory permit issued to the Petitioner No.1 and the no objection certificate from the owner of the premises together with a photocopy of the assessment bill of the building. This was required to be submitted within fifteen days. These documents were forwarded by the Petitioner No.1 on 9th September 2009.

18. The Petitioners, therefore, proceeded on the basis that the authorities are satisfied with the clarifications and, therefore, were surprised to receive a letter dated 23rd November 2009 addressed by the Respondent No.3 to the Petitioner No.1 alleging that the contents of the letter dated 9th September 2009 were not convincing. It was alleged that the leave and licence agreements were all for the period 1st January 1971 to 1st April 1974 and were old and that the no objection certificate from the owner was not submitted and that in the application for the renewal of permit, the name of Edul J. Havaladar has been wrongly incorporated, although the said E.J. Havaladar has passed away. It was in these circumstances stated that if the documents mentioned in the letter were not furnished, action u/s 390(3) of the Mumbai Municipal Corporation Act would be taken. A copy of this letter is marked as Annexure HH to this petition. Before the Petitioners could respond to this letter, on 1st January 2010 the Respondent No.3 issued a show cause notice based upon the complaint of the Respondent No.4. The show cause notice reproduced the same objections contained in the letter dated 23rd November 2009 and alleged that the Petitioner No.1 ought to comply with the requests for production of documents within thirty days of the receipt of the letter/show cause notice failing which the Respondent No.3 would initiate necessary action including revocation of factory permit without any further intimation to the Petitioner No.1. The Petitioners sent reply and sought opportunity of being heard by the Respondent No.3 for placing their version before him. The Petitioners were called for hearing by letter dated 18th February 2010 and the hearing was scheduled on 3rd March 2010. By a letter dated 3rd March 2010, the Petitioners pointed out as to how they came in possession, how the factory was set up and how they have all the necessary permissions and approvals. It was pointed out that there is no question of any objectionable matter or detail being included because E.J. Havaladar has resigned and the resignation was intimated to the Assistant Commissioner, S-Ward, Licence Department by a letter addressed as far back on 23rd April 1991. All statutory compliances under the Companies Act, 1956 have also been made. Therefore, there was no intention to mislead the department, nor any details with regard to E.J. Havaladar have been incorporated deliberately. Therefore, the show cause notices be withdrawn. There are various objections raised with regard to the manner in which the hearing has been held. Ultimately, an order dated 17th May 2010, Annexure LL to the petition came to be passed. There was correspondence pursuant to the said order as well. Ultimately, on account of the said order and the further orders passed allegedly at the behest of Respondent Nos.4 to 7, the Petitioners approached this Court by filing writ petition being Writ Petition No.1524 of 2010. This writ petition was filed on 21st July 2010. It challenged the order dated 13th April 2010 revoking the Petitioner No.1's factory permit and the actions in relation thereto. That writ petition was placed before a learned single Judge of this Court and by order dated 25th August 2010 the learned single Judge disposed off the same in the following terms:

The following order is passed by consent of the Petitioners and Respondent Nos.4

to 7:

i. The Petitioners shall file an application seeking renewal of the factory permit with the Respondent No.1 on or before 2nd September 2010.

ii. Respondent Nos.4 to 7 shall file their written submissions and/or documents, if any, on or before 9th September 2010.

iii. The application filed by the Petitioners shall be disposed of by the Corporation after offering a hearing to the Petitioners as well as Respondent Nos.4 to 7.

iv. Pending disposal of the said application and for a period of ten days from the receipt of the order by the Petitioners, in the event of the order being adverse to the Petitioners, the Petitioners are allowed to carry on their business.

2. Mr. Kamdar, learned senior advocate appearing for the Corporation on instructions states that if the said application is filed by the Petitioners, the same shall be disposed of on or before 23rd September 2010. The statement is accepted.

3. Writ petition is accordingly, disposed of, with no order as to costs.

4. Parties to act upon an authenticated copy of this order.

19. In compliance with the orders and directions of the Court as reproduced above, the Petitioners on 31st August 2010 made an application seeking renewal of the factory permit. In this application all details pertaining to obtaining of permissions, sanctions, no objection certificates have been set out including the area in occupation by the Petitioner No.1. It was also pointed out that the larger area has been occupied by the Petitioners to the knowledge of the authorities, so also Respondent Nos.4 to 7. In these circumstances, the renewal be granted, was the request made by the Petitioners. The Respondent Nos.4 to 7 filed their response to this application by their letter dated 9th September 2010 and raised various false and untenable pleas.

20. Pursuant to the orders of this Court, the written submissions were also forwarded and ultimately the impugned order dated 21st September 2010 was passed.

21. It is this order which is challenged in this petition.

22. Mr. Chinoy, learned senior counsel appearing on behalf of the Petitioners submitted that the entire action culminating in passing of the impugned order is taken at the instance of the Respondent Nos.4 to 7. He submits that once the authorities are satisfied that the factory permit can be granted, there is no question of any power of review or revision by the Assistant Municipal Commissioner. Once the permit was granted on 20th May 2008, the only remedy available for the authorities is to revoke it in terms of Section 479, that is only if there is any breach of the said provisions and not otherwise. Admittedly, there is no breach committed inasmuch as the suits filed in relation to trespass and the

allegations therein so also complaints of Respondent Nos.4 to 7 are not relevant and material for the purposes of the decision of the authorities. The authorities are required to consider only the requirements and conditions specified for grant of factory permit as prescribed in the Mumbai Municipal Corporation Act, 1888. Once that satisfaction is reached, then, the permit cannot be withheld, nor can the renewal be objected on some other grounds. 23. Mr. Chinoy has invited my attention to the terms and conditions based upon which the licence was issued to the Petitioner No.1. He submits that all the terms and conditions specified relate to the safety and related factors such as avoidance of nuisance and annoyance by use of power and electric meters. A proper sanitation is required to be maintained. At no stage there was any insistence on production of no objection certificate of landlord.

24. Mr. Chinoy submits that wholly irrelevant and unconnected matters have been taken into account and particularly about the documents of resignation of Mr. Edul J. Havaladar. There is no question of any misleading or false statement being made because the Corporation was intimated about the resignation by the Board of Directors. There may have been some error, but merely because the factum of his death has not been mentioned cannot be construed as a deliberate or malafide attempt on the part of the Petitioners to mislead the Corporation. On the other hand, the exercise of the power to renew the licence has been carried out contrary to law and only because of the insistence of the Respondent Nos.4 to 7 and at their behest the request has been rejected. In these circumstances, this Court should set aside the orders and direct that the running of the factory should not be interfered with.

25. Mr. Chinoy has pointed out that in the grounds mentioned in the petition, the Petitioners have elaborated as to how the Corporation has been shifting its stand so as to assist the Respondent Nos.4 to 7. It is submitted that merely because the enquiries were made by Respondent Nos.4 to 7 that the 1st Respondent summoned the Petitioners on 21st July 2009 and directed production of records of the Respondent Nos.1 to 3 showing the Petitioner No.1 as user of entire Bhuthania Estate. Even that aspect was clarified by pointing out the necessary and relevant material including the Agency Agreement with the Court Receiver. The claim of tenancy has been asserted and it has been pointed out that, it cannot be an issue in the present proceedings. The question of no objection certificate from the owner is raised as an afterthought and with a view to assist the Respondent Nos.4 to 7 in the pending legal proceedings. It is pointed out by the Petitioners that all three reasons viz., absence of ownership document and/or no objection certificate from the owner, misrepresentation by quoting the name of Mr. Edul J. Havaladar as one of the Directors and carrying out additions and alterations and increasing the factory area being the basis for rejection of request for renewal, are totally untenable and devoid of any substance. In this behalf, he has invited my attention to the fact that the factory permit was granted in the year 1968 on the basis of application in "Form A" forwarded to Respondent No.3 with various annexures which included no objection certificate

by Fali Bomanjee. That certificate refers to the enclosed plan which demarcated the entire area of the factory premises marked in red and states that the landlord had no objection to factory being operated, subject to obtaining necessary sanctions. Various inspection reports have also been relied upon. In these circumstances to hold that the Petitioners have increased the size of the factory area is absolutely uncalled for and the order, therefore, cannot be sustained. All the approvals and permissions are in place and yet the licences have not been renewed and if statutory authorities exercising statutory powers take extraneous matters into consideration and apply irrelevant factors, then, the entire exercise carried out by them is ex-facie, illegal and, therefore, must be interfered with and for this reason the impugned order be set aside.

26. On the other hand, Mr. Kamdar, learned senior counsel appearing on behalf of the Respondent Nos.1 to 3 submitted that the order is passed by the Assistant Municipal Commissioner on the basis of the necessary and relevant materials which have been produced by the parties. He has exercised the powers within the four corners of law. There is absolutely no substance in the contention that extraneous matters and irrelevant factors have been taken into account while passing the impugned order. He submits that the order sets out several reasons. Just because one of the reason refers to the permission or no objection from the owner/landlord, does not mean that the entire order is bad in law and, therefore, deserves to be set aside. Mr. Kamdar has invited my attention to the requirements that have to be fulfilled by persons like the Petitioners before they can obtain the factory licence or claim its renewal. He has invited my attention to the affidavit which has been filed by Mr. Ramakant Vishwanath Biradar, Assistant Commissioner, S-Ward in which it has been pointed out that No objection certificate was submitted from landlord for the additional area to be used, additional power to be used and additional process variation in the labourers to be employed in the factory. Further, the Petitioners have included the name of Mr. E.J. Havaladar for the renewal of factory permit who had already resigned on 9th February 1985 and died on 6th December 1989 which shows misrepresentation to the MCGM. Mr. Kamdar submits that the structure and building at site is in dilapidated condition and renewal of factory permit may cause danger to the life of the workers and commuters and residents in the nearby area. The no objection certificate submitted by the Director of Industries has expired and is not in force when the application for renewal of factory permit was submitted. It is noticed during site inspection that there are many unauthorised structures other than the approved structure. There is no physical R.G on the site and it is misused for industrial activities and purposes. Mr. Kamdar submits that fire escape balcony is merged in industrial unit and some part of the staircase has already collapsed. There is no way to go out of the premises in case of fire. In such circumstances, the Petitioner cannot insist that the factory permit must be renewed. If such is the position that has been noticed at the site and the order takes into account all such factors which are relevant, then, merely because there is some reference in the same to the legal

proceedings and disputes between the Petitioner and Respondent Nos.4 to 7 that by itself does not mean that the order is passed at their instance or that the Corporation has acted malafide. He, therefore, submits that the order should not be set aside, but must be sustained and the petition be dismissed.

27. Mr. Tulzapurkar, learned senior counsel appearing on behalf of the Respondent Nos.4 to 7 while supporting Mr. Kamdar additionally submitted that the Respondent Nos.4 to 7 had brought to the notice of the authorities the acts and deeds of the Petitioners. Ultimately, it is the property of Respondent Nos.4 to 7. They have a definite say in the matter. If their premises and land is being utilised for running a factory and if the activities of the Petitioners are found to be objectionable by them, then, they have every right to complain to the authorities. If on their complaint action has been initiated, that does not mean that the authorities have acted malafide. Mr. Tulzapurkar has invited my attention to the format in which the applications have to be made for issuance of permit or renewal thereof. He submits that the procedure prescribed necessitates forwarding of rent receipts/ agreement with landlord/ ownership documents. As far as the renewal is concerned, he submits that the renewal is prescribed in a specific form which also contains a stipulation as to whether the applicant has a rent receipt or an agreement with the landlord. This procedure is applicable for issuance and renewal of factory permits u/s 390 of the Mumbai Municipal Corporation Act. This one window system is in operation with effect from 15th August 2001. Mr. Tulzapurkar has invited my attention to the affidavit that has been filed by Respondent Nos.4 to 7 and has submitted that the Petitioners had not approached the Court with clean hands. He submits that in the affidavit it has been pointed out that the conduct of the Petitioners is dishonest. The Petitioners have misrepresented that they were in alleged occupation of the area of 4402 sq.ft of the said property since 1974. However, this statement is contradicting the Petitioners version as set out in the affidavit in reply dated 16th August 1984 filed in Notice of Motion No.1387 of 1984 in Suit No.1385 of 1984. There the Petitioners have stated that "after completion of construction of the entire 1st floor as required, the 1st Defendant did not request for occupancy of the suit premises because they did not need them immediately". He invites my attention to the affidavit in reply filed by one Kermeen Bose for and on behalf of Respondent Nos.4 to 7. Thus, a copy of this affidavit having been enclosed, it is clear that there are different versions about the alleged occupation of the area of 4402 sq.ft. If this was the position, the same should have been shown in the factory permit dated 2nd February 1977. This area is not shown therein which will prove that the Petitioners are misleading this Court. The Petitioners have also suppressed material facts with regard to the various plans. It is submitted that there is only one approved plan certified in 1976-77 by the Assistant Engineer and Factories "N" Ward for the ground and first floors. This plan bears the signature of the Petitioners. This plan clearly shows a ground floor without any existence or approval of canteen, locker room, changing room etc. Further, the first floor approved plan shows the first floor without 4402 sq.ft. Thus, the plans

which are annexed to the application dated 23rd January 2008 are not approved by the Respondent No.1. They only bear the stamp of the Chief Fire Officer. In such circumstances, once again the Petitioners are misleading the Court.

28. Mr. Tulzapurkar then submits that there is also a suppression with regard to installation of cooling tower and generator. It is submitted that there is no sanction for the same and if they were really sanctioned they would have figured in the authorised plan. There are misleading statements also with regard to "non-power" and "non-process based area". There is no such concept as far as the present case is concerned.

29. On the death of Mr. E.J. Havaladar also there is clear attempt to mislead this Court. There is no reference about the death of Mr. E.J. Havaladar in letter dated 23rd April 1991. However, in the renewal application the Petitioners have dishonestly annexed a copy of death certificate of Mr. E.J. Havaladar with a view to misrepresent that information of his death was already supplied to the Respondent No.1. However, Respondent Nos.1 to 3 have never been informed about the death as alleged.

30. Mr. Tulzapurkar submits that apart from the misleading statements, there is also fabrication of documents and in this behalf he invites my attention to the statements made at pages 319 and 320 of the affidavit in reply.

31. Mr. Tulzapurkar submits that apart therefrom, the renewal application has rightly been rejected. It has been rejected on several grounds and particularly for absence of approvals from the authorities. In such circumstances, when structures are not authorised and when there are no approvals or permissions produced with regard thereto, then, the activities carried on were illegal. If they were illegal, the factory permit could not have been renewed. In this behalf he invites my attention to the statements made in para 4 of the affidavit in reply. In such circumstances and when the Petitioners are illegally operating a factory for twenty years without valid licence and causing damage to the property of the owner/Respondent No.4, then, this Court should not exercise any discretionary and equitable jurisdiction in their favour particularly because the factory building was constructed around 1966 and is approximately 45 years old. The building is dilapidated and damaged purely due to misuse and overloading by adding severe weight on the structure by the Petitioners. In such circumstances and when the continuous breaches have been pointed out, this Court should not interfere with the impugned order but proceed to dismiss the writ petition.

32. With the assistance of the learned Counsel appearing for the parties, I have perused the petition and the annexures thereto. Similarly, I have perused the affidavit placed on record.

33. It must be clarified that the order passed on the earlier writ petition and reproduced in para 18 records that the Petitioners shall file an application seeking renewal of the factory permit with Respondent No.1 on or before 2nd September 2010. Thereafter, it was directed that the said application will be

decided by the Authorities. The time also was mentioned in the order of the Court. There is no merit in the submissions of the Respondents that this Court has not set aside the earlier orders passed by the Respondent Nos.1 to 3 specifically and, therefore, they are still in force. The order passed by this Court in the earlier writ petition is by consent of parties. The said order records that the Petitioners shall file an application for renewal of the factory permit. Once, the Court permits the Petitioners to file a fresh application and directs that the same be decided by the Authorities and at the same time also permits the Petitioners to carry on their business demonstrates that all earlier actions and orders of the Authorities are no longer subsisting and valid. The Court has proceeded on the basis that the earlier orders will not be given effect to. A fresh application for renewal will be made irrespective of those orders and that would be dealt with and decided by the Authorities in pursuance of the directions issued by this Court. Thus, there is no merit in this technical plea that the earlier orders being not set aside by this Court, they are still in force.

34. Accepting the arguments of Mr. Kamdar and Mr. Tulzapurkar in this behalf would mean that I ignore the specific directions of this Court. The specific directions are subsequent in point of time. They are issued by consent of the parties. The earlier orders of Respondent Nos.1 to 3 came to be passed in the month of April/May 2010. The Writ Petition No.1524 of 2010 was filed subsequently. In such circumstances, holding that the earlier orders are still in force would be going contrary to the order dated 21st August 2010 permitting the Petitioners to file a fresh application for renewal of factory permit. By this Court's order, the controversy is still at large. Once the Authorities and the private Respondents have proceeded on the basis that the Court has directed the Respondents to consider the new application and pass a fresh order, then, it is not open to them to argue to the contrary.

35. As far as the challenge to the impugned order is concerned, it must be noted that the Respondents had proceeded on the following factual position:

(1) The factory permit u/s 390 of the MMC Act was issued to the 1st Petitioner on 2nd February 1977 for the power of 95.5 KW (128 HP).

(2) The permit was issued after obtaining the no objection certificate from the Joint Director of Industries in the name of Mr. E.J. Havaladar.

(3) The plans were submitted and they showed the ownership of property with Mr. P.B. Bharthaniya.

(4) The commencement certificate was issued by the Executive Engineer, Building Department on 5th June 1964 alongwith the sanctioned plan.

(5) The permit was renewed on 31st March 1980 and again subsequently renewed after every two years up to 31st March 1988. In the meantime, it was observed that the Petitioner is using additional load of 87 HP in addition to what was stated in their original factory permit. Therefore, the factory permit was

revoked and the Petitioner No.1 was prosecuted u/s 390/471 of MMC Act for running the factory without valid permit and the Authority also informed the MSEB for disconnection of electric motive power supply.

(6) Thereafter, factory permit was restored and after obtaining no objection certificate from Joint Director of Industries for additional load. The Petitioners also submitted no objection certificate for additional load dated 8th January 2008 for 288.77 HP alongwith additional activity manufacturing of electrical control panel.

(7) The said factory permit was restored and renewed with effect from 1st April 1988 to 31st March 2002 and subsequently up to 31st March 2012 with retrospective effect.

(8) The Petitioners applied in the name of M/s. Formac Engineering Ltd on 23rd June 2008 for renewal of factory permit, additional load and change in constitution.

(9) The Respondent No.4 Smt. Piloo Bomanjee complained against renewal of factory permit. The complaint was that while renewing the permit in the year 2008, no objection certificate from the owner is not obtained. According to her, the no objection certificate was granted to Mr. E.J. Havaladar in the year 1968 subject to obtaining necessary sanction. While issuing the permit to Mr. Havaladar, Mr. Bharthaniya was the owner of the premises. Then the permit was restored and renewed in the year 2008. The said Mr. Havaladar alongwith Mr. Shapur P. Rao were shown as applicants. However, Mr. Havaladar resigned in the year 1985 and subsequently expired in 1989.

(10) After receipt of the complaint from Respondent No.4, a speaking order was passed on 3rd March 2010.

(11) Subsequently on 19th July 2010 the factory permit was revoked and this fact was informed to MSEB for disconnection of electric motive power from 21st July 2010.

37. There is a reference made to these facts in the affidavit of Mr. Ramakant Viswanath Biradar working as Assistant Commissioner, S-Ward.

38. From the record it is apparent that the impugned order has been made by this very gentleman. Mr. Chinoy, therefore, is right in his submission that the factory permit was granted but subsequently revoked only on the ground of absence of ownership documents and/or no objection certificate from the owner. It was also revoked on the ground that the Petitioner has misrepresented the case stating the name of Mr. E.J. Havaladar as one of the directors when he was not alive. Lastly, the revocation is on the ground that the Petitioner No.1 carried addition and alteration in the premises and increased the factory area to more than what is mentioned in their application.

39. As far as the misrepresentation, namely, stating the name of Mr. E.J.

Havaladar is concerned, I find that Mr. Chinoy is right in his submission that there is no misrepresentation. The Petitioners have clarified that the factory permit was issued in the name of its former promoter and director Mr. E.J. Havaladar on 17th December 1968. The no objection certificate dated 17th October 1968 from the Joint Director of Industries was also issued in the name of Mr. E.J. Havaladar. The 1st Petitioner was incorporated only in December 1968. The factory permit has been transferred from the name of former promoter director Mr. Havaladar to the name of the Petitioner No.1 which is substantiated by the letter dated 5th December 1970. That letter is annexed as Annexure "S" to the writ petition. It reads as under:

MUNICIPAL CORPORATION OF GREATER BOMBAY (FACTORY FORM 6 & 7)

No. AEBF/1277/V-537 of 5-12-1970

To

M/s. Formac Engineering Ltd, Bharthania Estate, KANJUR, BOMBAY 78.

Subject: Proposal to establish Engineering Workshop by M/s. Formac Engineering Ltd., factory at Kanjur Marg, Bombay 78.

Sir/Gentlemen,

Reference: Your application No. AEBF/1277/V-537

dated.....

There is no objection to the establishment of the factory at the place mentioned above subject to your compliance with the requisitions, requirements and conditions stated below and overleaf.

You are, therefore, hereby requested to comply with the requirements and conditions to the satisfaction of the Municipal Commissioner within 15 days from the date hereof and intimate this office of your having done so in the accompanying form "C" on the Municipal Commissioner being satisfied that the same are fully complied with, a written permission u/s 390 and 479 of the Bombay Municipal Corporation Act to establish and work the factory will be granted to you on payment of the necessary fees which will be communicated to you in due course.

Please note that this intimation does not entitle you to work the factory, and that, if the factory is established without compliance with the said requisition, requirements and conditions, you will render yourself liable to prosecution under Sections 471 and 472 for contravention of the provisions of Section 390.

Yours faithfully, Sd/ (S.V. GAMBHIR) Ward Officer, N-Ward.

Accompaniments:

1 Factory Form "C" 2 Undertaking Proforma.

Copy forwarded for information To Sr. Inspector, Licence.

Asstt. Engineer

40. A further perusal of endorsements thereon would demonstrate that the permit was renewed for a period ending 31st March 1980 subject to the same restrictions as specified in the original permit. Thereafter, permit was renewed for period ending 31st March 1982, 31st March 1984 and the endorsements at pages 179 and 180 would substantiate this aspect.

41. In the rejoinder affidavit affirmed on 18th November 2010 at pages 539 and 540 of the petition paperbook, the Petitioners have pointed out that the factory permit was renewed on nine occasions from 1970 to 2008 but not once did the authorities raised the issue of the death of Mr. E.J. Havaladar. Once the factory permit was issued in the name of the Petitioner No.1-company, then, the Respondent's finding that the Petitioners have misrepresented the authorities deliberately cannot be supported at all. All the more, when it has been pointed out that in the application dated 23rd January 2008 name of Mr. E.J. Havaladar was accidentally mentioned and it was by mistake. There is no question of any benefit being derived by the Petitioners because the Petitioners have brought on record the fact that Mr. E.J. Havaladar resigned as Director of Respondent No.1 as early as 1985. The Petitioners complied with all statutory requirements as per the Companies Act, 1956 by filing Form No.32 with the Registrar of Companies and, therefore, made a public declaration of resignation of Mr. E.J. Havaladar as Director of Petitioner No.1. All annual reports and returns of the Petitioner No.1 submitted to the Registrar of Companies ceased to include the name of Mr. E.J. Havaladar. A copy of the resolution of the Petitioner No.1 regarding the resignation of Mr. E.J. Havaladar was also forwarded to the Respondent No.1 under a cover of the Petitioner No.1, letter dated 23rd April 1991 (Exhibit MM, page 255 to the writ petition).

42. That letter specifically states that there was a discussion held during the visit of the Licence Inspector to the Factory on 19th April 1991. The inspector was aware of the fact that the Petitioners were desirous of removing the name of Mr. E.J. Havaladar from the licence. Accordingly, a copy of the Board Resolution passed in a meeting held on 9th February 1985 accepting the resignation of Mr. E.J. Havaladar was enclosed with this letter. In such circumstances, there is sufficient compliance even otherwise. There is no merit in the contention raised that the Petitioners mislead the authorities. It does not make any difference once the licence/permit is in the name of Petitioner No.1 as to whether an application is forwarded by the Petitioners but the name of some ex-director is mentioned therein. As long as the application is there in the name of Petitioner No.1-company, it was processed and the authorities were even otherwise aware that the permit stands in the name of Petitioner No.1, then, there is substance in the grievance raised by the Petitioners that the issue of Mr. Havaladar's name being included in the application is nothing but a proof of the authorities acting at the instance of Respondent Nos.4 to 7. Once the matter has been clarified and that

the inclusion of Mr. Havaladar's name was accidental, then, the matter must rest there. Anything stated by the private Respondents is of no consequence. The authorities were not right in revoking the permit on such flimsy ground.

43. The other ground which is mentioned pertains to the ownership document and/or no objection certificate from the owner not being submitted while renewal of the permit in the year 2008.

44. In this context, what has been held in the impugned order is that to obtain permission of renewal of factory permit, the applicant is required to furnish original factory permit and if there is any alteration in factory permit documents, then, three copies of machine layout plan, three copies of indemnity bond on Rs.200/-stamp paper, copy of approved occupation plan or building completion plan, copy of registered agreement showing ownership/occupancy in the name of the applicant, no objection certificate of landlord/society has to be annexed. In the order passed by the Authorities on 21st September 2010, it is stated that a complaint was made by Mrs. Piloo Bomanjee on which a show cause notice was issued to Mr. Shapur P Rao, Chairman of the Petitioner No.1 on 1st January 2010 asking him to submit no objection certificate from the owner. The requirements and remarks in the impugned order at page 106 of the paperbook onwards does not indicate that no objection certificate was not submitted at all. The Authorities have proceeded on the basis that the Petitioners desire changes and alterations in the factory permit at the time of the renewal. Therefore, for change in factory area, for change in power, for change in factory process and for change in constitution, the no objection certificate from landlord is required so also the permission. It is held that the factory permit was issued in 1988 for a total area of 12000 sq.ft but now the factory is running by using total area of 18631 sq.ft and for any change in area of the factory, no objection certificate from the landlord is necessary.

45. The Petitioners have clarified that there is absolutely no basis for such a complaint. They have stated that there is neither alteration in the use of land nor any radical change in the plant and machinery, but they have been upgraded after duly notifying the Municipal Corporation. It is clearly stated by the Petitioners that all that is required is physical possession of the area for which the permit is applied for. That is provided by forwarding the rent receipts as well as the orders of the Court of Small Causes for deposit of rent. Further, Agency Agreement executed with the Court Receiver shows that the Petitioners were in complete physical possession and occupation of an area of 1807.29 sq.mtrs. This proof of possession was enough and a fresh no objection certificate from the owner is not manifested by law as a condition for renewal of licence. In any event, the Petitioners have pointed out that the Authorities were aware throughout that they are in possession of the aforesaid area. In the year 1968, the Director of Industries granted no objection certificate permitting the Petitioners to start a mechanical workshop in the ready construction of 12000 sq.ft and using power of 98 KW at Survey No.26, Hissa No.1, Kanjur, Mumbai.

The no objection certificate dated 17th October 1968 and further no objection certificate from the Directorate of Industries for 98 KW of power dated 21st November 1968 is relied upon. These letters were forwarded to the Mumbai Municipal Corporation by J.P. Parekh & Sons under the instructions of Mr. E.J. Havaladar who was the promoter director of Petitioner No.1. The Petitioners were granted factory permit in the year 1968 on the basis of application in Form "A" forwarded to Respondent No.3 with various annexures. That included a no objection certificate issued by Mr. Fali Bomanjee dated 23rd October 1968. That no objection certificate was with reference to the enclosed plan demarcating the entire area of factory premises marked in red. It states that landlord have no objection to the factory being operated therein subject to all necessary sanctions. The various inspections carried out and the returns in that behalf would show that a factory permit of larger area than that of area approved and sanctioned by Director of Industries has been granted by the Respondent No.1. It is been pointed out that in application made by the Petitioner No.1 to Respondent No.1 for factory permit, the area disclosed is 1115.24 sq.mtrs. On the basis of the records available with the Respondent No.1, it sanctioned a factory permit on 20th May 2008 suo moto for area of 1807.29 sq.mtrs. Further, the Petitioners have relied upon report dated 21st February 1975 whereby Respondent No.1, as early as in 1975 recorded and sanctioned the Petitioners application for an increase of 277 sq.mtrs to 1777.064 sq.mtrs which amounts to 19212.20 sq.ft approximately. This knowledge is attributed to the Respondent No.1 by the Petitioners right from 1975. The finding that the Petitioner No.2 was in occupation of larger area is, therefore, clearly incorrect. Further, in the application dated 23rd January 2008 the Petitioners applied for 1115.24 sq.mtrs of area and that area was sanctioned by Directorate of Industries. It is the Respondent No.1 in order to secure itself more revenue mentioned the entire area. In such circumstances, it is merely because the Respondent Nos.4 to 7 were trying to take advantage of the shifting stand of the Authorities that the impugned order mentions that the Petitioners are carrying on their activities in a larger area.

46. In this behalf, in the affidavit that is filed by the Corporation in this petition, as far as the factual basis is concerned, it has not been stated as to what is the additional area which is found in possession of the Petitioners. The Petitioners have pointed out by filing an affidavit in rejoinder that it was using electric motive power as sanctioned by the Directorate of Industries. They applied for supply of additional power. The Thane Electricity Supply Company Ltd transferred the meters in the name of the Petitioner No.1 on 20th January 1975. The Petitioner No.1 has been making payments continuously for the additional power firstly to Thane Electric Supply Company and latter to MSEB. The Respondent Nos.1 to 3 never raised any objection in respect of the same from the year 1974 to 1988 as they were fully aware of the fact that the Petitioner No.1 was lawfully using the additional power. It is pointed out that the Petitioners used power until 31st March 1988 but objection was raised for use of additional power by them,

when the Petitioner applied for DGTD registration. Therefore, the Petitioners were directed to obtain permission for increase of power from Directorate of Industries. The Petitioners have relied upon no objection certificate for the use of additional power issued under the letter of Directorate of Industries dated 8th January 2008. The Petitioners were permitted to use 215.5 KW in the area of 12000 sq.ft wherein all machineries are placed. In such circumstances, the finding recorded that the Petitioners have been using additional power without proper permissions and approvals is incorrect. The order records that there is increase in area from 12000 sq.ft to 18631 sq.ft for which no objection certificate from landlord is not submitted. There is increase in power from 95.5 KW to 215.5 KW for which no objection certificate from the landlord is not obtained. Now, in the same order it has been stated that the Petitioners have submitted the no objection certificate from the Directorate of Industries dated 8th January 2008 with certain conditions and some of the conditions are violated. It is stated that necessary approval from MCGM has not been obtained nor it is clarified that the no objection certificate from the Directorate of Industries was valid for twelve months from 8th January 2008 and it expired on 08th January 2009 and as of today the no objection certificate of the Directorate of Industries is invalid. It stands expired.

47. I do not see how such findings can be rendered by the authorities and that too without adverting to any of the documents. The Petitioners have not only produced amended no objection certificate from the Directorate of Industries, Government of Maharashtra dated 8th January 2008 but while recording the history of the case the Respondent Nos.1 to 3 have clearly observed that the factory permit was restored after obtaining no objection certificate from the Directorate of Industries for additional load. This permission has been annexed as annexure W, page 185 of the petition paperbook. This permission from the Joint Director of Industries shows that an application was made for no objection certificate on 26th December 2007. The Director of Industries has made reference to the earlier no objection certificate issued on 17th October 1968. While sanctioning the additional load what has been held is that the sanction is granted for 215.5 KW on the condition that the necessary permission from the local municipal corporation be obtained before the load is utilised. The other law needs to be observed. It is stated that the no objection certificate will be valid for twelve months from 8th January 2008.

48. At Annexure "S", the Director of Industries has clarified that as per the agreement of lease dated 1st January 1971 Mrs. Piloo Bomanjee has permitted the 1st Petitioner to set up a factory within an area of 11000 sq.ft. M/s. Formac Engineering Pvt Ltd is carrying on and working the till date. It is carrying on industrial production. The letter dated 15th January 2010, further clarifies that for the industrial activity the additional load of power has been sanctioned. The area has been recorded as 12000 sq.ft. There is no permission granted for additional load for any area above 12000 sq.ft. In such circumstances, there is no question of cancelling the no objection certificate dated 8th January 2008. As

far as the pleading in relation to Annexure "W" is concerned, it has been pointed out by the Petitioners in the petition and particularly in paragraph 4(L) at page 18 of the petition paperbook that the Directorate of Industries permitted Petitioner No.1 to use the aforementioned additional power. The Directorate of Industries has turned down the request of Respondent No.4 to cancel the no objection certificate. Surprisingly, in the order passed on 21st September 2010 there is absolutely no reference to the further communication between Mrs. Piloo Bomanjee and the office of the Director of Industries. In such circumstances and when the factual aspects are not being disputed, the Petitioners cannot be faulted for having obtained the no objection certificate. In any event, it is no longer open to the 1st Respondent to hold to the contrary when it has renewed the Petitioner Nos. 1's factory licence in 2008 up to 2012 with additional power and additional area. This is amply clarified by the note dated 15h January 2010. The Petitioners have rightly raised the issue that the 1st Respondent at that time did not call upon the Petitioners to submit any permissions/no objection certificate from owners/landlords of the premises.

49. It is in such circumstances that I find that Mr. Chinoy is right in placing reliance on the judgment of this Court reported in *Shri M.G. Sarasappa Kurup Vs. The Municipal Corporation of Greater Bombay and Others*, . It may be that the issue before the Court was whether the Corporation was justified in refusing permission for storage of auto tyres in the premises occupied by the Petitioner on the ground that the Petitioners have failed to show that they have any title to the premises. It is in that context that the learned single Judge has observed that circular No.18 of 1978 issued by the Municipal Commissioner clarifies that before any permission of licence is issued u/s 390 or 394 of BMC Act, consent of the landlord is not necessary. The circular does not envisage any such consent. The learned Judge has rendered a finding that the language of Section 394 of the MMC Act shows that the enquiry should be restricted to the applicant's physical possession of the premises for which permission for storage of articles is sought. It is wholly irrelevant as to whether the applicant is owner of the premises or lawful tenant. So long as there is no declaration by the Court of competent jurisdiction with regard to determination of relationship of landlord and tenant or that the applicant is in unauthorised occupation or a trespasser in respect of the premises or that the premises are unauthorised or an encroachment, the Commissioner cannot assume to himself the role of deciding the title and make that the basis for refusing permission. While rendering such a finding, the learned Judge has referred to circular No.18 of 1978. That circular was relied upon by the Corporation before the learned single Judge on the finding that no part of the circular supports the Corporation stand, the learned Judge concluded that even this circular accepts the position that insisting on production of landlord's consent before any permission or licence is issued u/s 390 or 394 of the Act is not envisaged by the said provisions. Thus, the learned single Judge concluded that the circular re-inforces the statutory position. In such circumstances, reliance by Mr. Chinoy on this judgment is apposite and well

placed.

50. Finding that it will not be possible to sustain the order on this ground, it tried to support the ultimate conclusion by arguing that no objection certificate from the landlord is not submitted for increasing electric motive power. Once no objection certificate from the landlord or his consent was otherwise not necessary for setting up and/or running the factory and as far as the additional load is concerned only the permission from the Director of Industries was contemplated, then, the Corporation cannot justify its conclusion was arrived at in the impugned order on the basis that the landlord's consent for additional power was necessary and that having not been obtained, the Petitioners cannot use the additional power.

51. The contention of the Petitioners is that the no objection certificate from the Director of Industries has not expired as erroneously concluded by the 1st Respondent. Even that aspect has been dealt with by me. There is no question of the said no objection certificate from the Joint Director having expired. The clarification issued subsequently and particularly on 15th January 2010 by the said Director has not been adverted to by the 1st Respondent at all.

52. Thus, for both, namely, for additional power and additional area there was no necessity of obtaining any no objection certificate from the landlord. If the landlord/owner or anybody claiming ownership rights is alleging that the Petitioners have utilised additional area for the factory or are running the factory in an additional area, then, the landlord can always approach a competent forum/Court and seek appropriate declarations in his favour. The owner/landlord made complaints to the authorities but once the authorities have no power to adjudicate on the issue of title or ownership of the property and when their policies do not envisage any no objection certificate or prior permission from the landlord or his consent otherwise running for the factory, then, all the more, the exercise undertaken in the instant case was wholly unnecessary and not permissible in law.

53. Mr. Tulzapurkar and Mr. Kamdar relied upon the subsequent circulars and particularly the one window system introduced by the Corporation to support their argument that for renewal of factory permit the earlier circular has no application and it is this policy which is applicable.

54. It is clarified in the brochure itself that this is a one window system in respect of issuance/renewal of factory permit and it comes into force from 15th August 2001. The one window system for issuance/permit of factory will cover the trades listed at Appendix A.

55. The Petitioners had pointed out that they are in the business of metal cutting/mechanical workshop. Assuming that the said activity is covered by Appendix A to the circular, yet, all that it envisages is that the rent receipts/agreement with landlord/ownership documents/photo-passes are one of the documents to be enclosed. Now, the marking as far as this column is concerned would suggest

that either rent receipts/agreement with landlord/ownership document/photo-passes can be produced. It does not indicate that proof of ownership must be produced. The nature of the right claimed is not relevant. If the person is not the owner, then, he should produce some arrangement with the owner of the property for running the factory or applying for factory permit. The very reference to the term "photo-passes" would suggest that one window system does not envisage any enquiry into the title documents. The satisfaction is only with regard to the possession and nothing more. Even when a application for renewal of permit envisaged by this policy is made, that does not mean that the Form Appendix E envisages production of documents such as no objection certificate/consent from landlord. The reliance that is placed on Appendix B to this circular would show that the documentary evidence contemplated therein as under:

3) DOCUMENTARY EVIDENCE

Rent Receipt/agreement with land owner/ownership document/partnership deed/ or any other relevant documents for ownership/N.O.C. of property owner/proof of authorised/tolerated status of the structure/premises.

Thus, any one of the said documents is enough and production of no objection certificate or consent of the landlord is not mandatory. The Petitioners have, therefore, clarified this aspect in their affidavit in sur-rejoinder dated 4th January 2011. The circular No.18 of 1978 has not been superseded by any subsequent policy as was sought to be asserted in the Corporation's affidavit. Having dealt with the aspect that the landlords consent or no objection certificate was unnecessary and could not have been insisted upon, I am of the view that there is enough material to conclude that the impugned order has been passed only at the instance of Respondent Nos.4 to 7. The Corporation was not required to take any cognizance of the on going dispute between the Petitioners and Respondent Nos.4 to 7. The Petitioners had pointed out that Respondent Nos.4 to 7 were unable to secure any order either from this Court or from the Small Causes Court in the pending proceedings and were therefore frustrated. They were desirous of somehow ousting the Petitioners from the factory premises is the grievance of the Petitioners. In these circumstances, there was no necessity for the authorities to have taken note of this complaint and modify or cancel their earlier decision.

56. As a result of the above discussion, it is not necessary to go into any further factual aspects. The attempt made by the Respondent Nos.1 to 3 to justify the conclusion is on the basis that the building is dilapidated and that some unauthorised construction has been made thereon and, therefore, the renewal of factory permit may be dangerous to the lives of the workers, commuters and residents in the nearby area. However, beyond reiterating those conclusions in the affidavits filed before me, the order does not indicate anything by which it can be concluded that the factory permit was revoked only because of the ruinous condition of the structure/building. If major structural repairs have to be

done immediately as is the remark recorded by the 1st Respondent, then, the factory permit could have been renewed by imposing condition to this effect. Even now, such a condition can be imposed by the authorities. It was not necessary for them to have revoked the factory permit which was already granted from 2008 till 2012, without referring to any material to support the conclusion that the structure is dilapidated and ruinous. If major structural repairs are necessary according to the report of the Assistant Engineer submitted way back in 2006, then, why the Respondent No.1-Corporation has not insisted upon the Petitioners carrying out such structural repairs till date, is not clear to me at all. The faint attempt of Mr. Kamdar to justify the final conclusion on the ground that the structure is ruinous cannot be countenanced because the main plank of the order, is absence of no objection certificate/consent of the landlord/owner. In such circumstances, it is not possible to accept the contention that the factory permit was not renewed and was revoked also because of ruinous condition of the structure. This is not a stage where a inquiry into the stability of the structure or otherwise can be held. The Respondent Nos.1 to 3 can while renewing the factory permit impose a condition to this effect, if independent inspection carried out by them demonstrates that the structure requires major repairs. Nothing prevents the authorities from taking such steps as are permissible in law in the interest of safety of workmen and staff and all those residing within the vicinity of the factory/building of the Respondent Nos.4 to 7. However, they were not justified in revoking the factory permit on the grounds and for the reasons set out in the impugned order. It is well settled that a Court exercising jurisdiction under Article 226 of the Constitution of India and particularly while considering a request to issue a writ of certiorari, quashing an order of the present nature is entitled to investigate the action of the local Authority with a view to seeing whether or not they have taken into account matters which they ought to have taken into account or conversely have refused to take into account or neglected to take into account matters which they ought to take into account (R.V. Tower Hamlets London Borough Council, Ex-chetnik Development Ltd (1988) ACC 858). This view is referred by our Hon"ble Supreme Court in the case of Tata Cellular v. Union of India reported in AIR 1996 11. The emphasis is that no extraneous matters should be taken into consideration by the public Authority. Precisely, that has been found in this case. If matters of public safety and the one contemplated by Section 390(3) were alone taken into account, possibly there was no occasion to interfere. However, when the impugned order is founded on considerations alien to or extraneous of the subject provision and attempt is made to justify some other observations and findings, then, unless it is possible to exclude or separate the relevant and the irrelevant or non-existent, the final conclusion cannot be upheld. I have followed and applied this principle which is laid down in judgment of the Hon"ble Supreme Court in the case of The State of Maharashtra and Another Vs. B.K. Takkamore and Others, . The findings and conclusions (at page 111 of the paperbook) in the impugned order are based mostly on the premise of no objection certificate/consent from the landlord/owner being absent and the authority being misled by

the Petitioner, namely, death of Mr. Havaladar. The other finding on safety of workers because of dilapidated nature of the structure are stated to be based on site visits and inspection report, nothing of which is either specified or produced. Thus, irrelevant and extraneous material is taken into account.

57. In the result, the writ petition succeeds and Rule is made absolute in terms of prayer Clause (a). In the view that is taken, the decisions on the point of conduct of the Petitioners and suppression need not be referred. They are relied upon to highlight essentially private disputes.

58. As far as the relief sought vide prayer Clause (b) is concerned, it is clarified that once the impugned order is set aside the factory permit issued in favour of the Petitioners stands renewed till 31st March 2012, but, it would be open for the Respondent Nos.1 to 3 to inspect the structure/factory and upon such inspection if it is of the opinion that the structure requires major repairs, then, this order will not prevent them from issuing appropriate directions in that behalf in accordance with law. They can also insist upon the Petitioners' complying with the same. Rule made absolute subject to above observations with no order as to costs.