

(2025) 06 BOM CK 0097

In the Bombay High Court

Case No : Appeal From Order (ST) No. 924 Of 2025

Mohd. Siddik Shaikh

APPELLANT

Vs

Municipal Corporation Of Greater Mumbai

RESPONDENT

Date of Decision : 09-06-2025

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21
Mumbai Municipal Corporation Act, 1888 — Section 312, 313, 313A, 314, 314(d), 315, 342, 351, 354A, 354A(1), 354A(2), 372, 405, 484, 485, 515A
Uttar Pradesh Urban Planning and Development Act, 1973 — Section 27, 27(2)

Citation : (2025) 06 BOM CK 0097

Hon'ble Judges : Gauri Godse, J

Bench : Single Bench

Advocate : V.A. Sugdare, Sandeep Sharma, Purnima Kantharia, Om Suryawanshi, Y.M. Marathi

Final Decision : Allowed

Judgement

Gauri Godse, J

BASIC FACTS:

1. This appeal was heard on 6th March 2025, and the judgment was reserved. Later on, this court noticed that the appeal was argued based on an unamended Section 354A of the Mumbai Municipal Corporation Act, 1888 ('said Act'). The said section was amended in the year 2012. Hence, the appeal was listed for directions on 20th March 2025, and at the request of the respective learned counsels for both parties, the appeal was listed for further hearing on 27th March 2025. Learned counsels for the parties submitted that the amendment to the Section is only to replace the word 'Commissioner' with the word 'Designated Officer'. Hence, it was submitted that the arguments already made by them would not change due to the amended Section.

2. This appeal is preferred by the plaintiffs to challenge the judgment and order

dated 23rd August 2024 dismissing their application seeking an order of temporary injunction restraining the corporation from taking any action pursuant to the notice impugned in the suit. The suit is filed to challenge the notice dated 21st October 2020 ('suit notice') issued by the corporation under Section 354A of the said Act.

3. The plaintiffs have challenged the suit notice on the ground that they are lawfully occupying their respective structures on the 6th and 7th floors in the building in respect of which the corporation has issued the suit notice. Plaintiffs claim that the suit structures have existed since before 1958, and no unauthorised construction was carried out in respect of the building, and only tenable repairs were carried out. By the impugned order, the interim relief of injunction is refused on the ground that demolition work was already carried out by the corporation above the 5th floor.

SUBMISSIONS ON BEHALF OF APPELLANTS:

4. The submissions made by the learned counsel for the appellants ('plaintiffs') are summarised as follows:

a) The suit notice was never served upon the plaintiffs. The plaintiffs' structures have existed since 1958 and, except for tenable repairs, no unauthorised construction has been carried out as alleged in the suit notice. The description of the offending structure in the suit notice indicates that the corporation has alleged unauthorised reconstruction of the building without permission, and thus, the suit notice directs the owner/occupier/landlord/tenant to stop the erection of the building forthwith. The description of the alleged unlawful work described in the schedule of the suit notice and the sketch indicates that the corporation's allegation is regarding the reconstruction of the building without permission. The speaking order dated 15th March 2022 refers to the work order issued by the Mumbai Building Repair and Reconstruction Board, which is a unit of MHADA (Maharashtra Housing and Area Development Authority) for repairs of the building. The speaking order records that the suit notice was issued alleging reconstruction of the building; however, after going through the work order and repair plan of MHADA, the corporation concluded in the speaking order that the building upto the 5th floor was authorised. The repair plan of MHADA referred to in the speaking order itself indicates that there is no new construction in the building, and only repairs were carried out. The appellants would therefore be entitled to lead evidence to support their contentions that the suit notice is illegally issued, and the appellants' structures have existed since prior to 1958, and there is no new construction carried out.

b) Section 354A is a drastic provision that enables the corporation to demolish the offending structure/construction if, within 24 hours of the notice, permission is not produced. Therefore, the concerned person who would be affected must be served with the notice. Nothing has been produced on record by the corporation that the owner of the building or the person affected has been served. To support

his contention regarding service of notice, learned counsel for the appellants relied upon clauses (m) and (n) of Section 3 of the said Act, which defines 'owner' and the 'person' deemed to have been residing in the dwelling.

c) Learned counsel for the appellants relied upon various provisions in the said Act, which refer to the words 'owner' and 'person'. Section 315 of the said Act refers to the words 'owner' and 'occupier', whereas Section 314(d) refers to the word 'person'. Section 314 permits the corporation to take action against the structure erected in contravention of Sections 312, 313, and 313A of the said Act. In view of action under Section 314, the person in occupation or possession of the offending structure is likely to be evicted. Section 372 refers to the word 'person'. Section 405 of the said Act provides for issuing a written notice to the owner, farmer or occupier of any private market or slaughter house for taking action under the said provision. Section 484 provides for the manner of service to be affected on the owners of the premises and other persons, and Section 485 provides a procedure for service on the owner or occupier of the premises. Thus, a harmonious reading of the word 'person' is required to be made for the purpose of service of notice under Section 354A.

d) Sub-section (1) of Section 354A can be invoked only when the designated officer is satisfied that the erection of any building or execution of such work as described in Section 342 has been unlawfully commenced or is unlawfully carried out. However, if immediate action is not taken pursuant to the notice under sub-section (1), the notice cannot be further pursued after a gap of a substantially long period for taking action under sub-section (2). If immediate action as contemplated under sub-section (2) is not taken and the construction is complete or the alleged construction or work is not found to have been continued, the provision of Section 351 of the said Act will come into play, and the notice under Section 354A cannot be pursued further.

e) The wording of sub-section (1) indicates that the notice under sub-section (1) should contain an exact description of the alleged unauthorised work. In the present case, the notice under Section 354A of the said Act does not describe any specific work alleged to have been unlawfully carried out. The notice vaguely states that the building is being reconstructed unlawfully. The speaking order, however, records that as per the plan prepared by MHADA, the building is authorised upto the 5th floor. The speaking order itself falsifies the allegation made in the notice. The object of the provision of Section 354A is to take action for the ongoing work and not the work that is completed. The contents of the notice and the reasons in the speaking order, coupled with the inspection report placed on record by the corporation, indicate that there is no reason or occasion to invoke the provision of Section 354A, as there was no unauthorised work carried out as stated in the notice.

f) To support the submissions regarding service of notice, learned counsel for the appellants relies upon the decision of the Hon'ble Apex Court in the case of Municipal Corporation of Greater Mumbai and Ors Vs. Sunbeam High Tech

Developers Private Limited (2019) 20 SCC 781. Learned counsel for the appellants in particular relies upon paragraph no. 24.5.1 of the judgment, which provides for personal service of notice to the person who is raising or who has raised the illegal structure, including owner/occupier/builder/contractor/architect, etc.

g) Learned counsel for the appellants relied upon the decision of this court in case of J. R. Patel Vs The Municipal Corporation of Greater Bombay AO No. 681 of 2001, dated 13.10.2001, A.M. Khanwilkar,J, in the context of service of notice and hearing to the affected person for taking action under Section 314 of the said Act. The learned counsel for the appellants also relied upon the decision of the Hon'ble Division Bench of this Court in the case of Mohd. Sayed Mohd. Salim Nagori Rizvi Vs The Municipal Commissioner and others 2018 SCC Online Bom 2695 to support his submissions that prior notice and opportunity to show cause must be given to the affected party. Learned counsel for the appellants further relied upon the recent decision of the Hon'ble Apex Court in the case of State Bank of India and Others Vs Rajesh Agrawal and Others (2023) 6 SCC 1. Learned counsel for the appellants submits that the Hon'ble Apex Court, after referring to various well-settled legal principles that service of notice should be in accordance with the principles of natural justice, held that even for administrative action, notice to the affected person is mandatory as it involves civil consequences which adversely affects the concerned person.

h) Learned counsel for the appellants relied upon various decisions to support his contentions on the definition of the word 'person'. According to him, the word 'person' has to be read in a larger context with reference to the words 'occupier' and 'owner'. To support his submissions on the interpretation of the word 'person', learned counsel for the appellants relied upon the decision of the Hon'ble Apex Court in the case of Industrial Supplies Private Limited and Anr Vs Union of India and Others (1980) 4 SCC 341, Ramanlal Bhailal Patel and Others Vs State of Gujarat (2008) 5 SCC 449. Learned counsel for the appellants thus submits that the well-settled legal principles interpreting the word 'person' will have to be taken into consideration for the interpretation of the word 'person' referred to in Section 354A of the said Act. He thus, submits that for taking drastic action under Section 354A the relevant provisions of the said Act which refers to the word 'person', 'owner' and 'occupier' read with the provisions for affecting service is required to be read harmoniously to mean that any person likely to be affected in view of the action contemplated under Section 354A is necessarily to be served with the notice enabling him to put forth his case before the action is taken by the corporation as contemplated under sub- section (2) of Section 354A of the said Act.

i) Thus, prima facie the suit notice is illegally issued by the corporation without following the relevant provisions under the said Act for service of notice and without recording satisfaction as contemplated under sub-section (1) of Section 354A which results into drastic action of demolition within 24 hours as

contemplated under sub-section (2) of Section 354A. There is ample evidence available to support the appellants' contentions that the suit structures have existed since before 1958, and the work carried out in the building in which the suit structures are situated is only the repair work as per the repair plan prepared by MHADA. The suit notice is issued without verifying the basic information about the building and the repair work initiated as per the repair plan prepared by MHADA. The impugned judgment does not deal with the illegality of the manner in which the notice is issued and the repair plan prepared by MHADA, which indicates that only the repair work was carried out. The reasons recorded by the learned judge of the City Civil Court refusing to grant an interim injunction are based on perverse reasoning and completely ignore the original existence of the building as per the MHADA record and repair plan prepared by MHADA. Hence, the issue of the legality of the suit notice is required to be examined after substantial evidence is examined by the court. The impugned order would require interference by this court as the appellants would be entitled to interim protection in as much as, prima facie, the impugned notice and the speaking order are illegal.

j) Learned counsel for the appellants relied upon the legal principles settled by this court in the case of *Sopan Maruti Thopte and Another Vs. Pune Municipal Corporation and Another* 1996 (1) Mh.L.J. 963. This court held that for sufficient compliance with the principles of natural justice, the commissioner can either call for the statement in writing or give a personal hearing to show cause why the alleged unauthorised construction should not be demolished. Learned counsel for the appellants also relied upon the decision of this court in the case of *Sub Vijay International Pvt. Ltd. Vs Commissioner, Municipal Corporation of Gr. Mumbai and Another* 2007 Mh. L.J 74, to support his submissions that the guidelines issued in the decision of *Sopan Maruti Thopte* are based on fair play by the local authorities and are binding upon the municipal corporation.

k) Learned counsel for the appellants relied upon the observations of this court in the decision of *Kangana Ranaut Vs. Municipal Corporation of Greater Mumbai and Others* 2020 SCC OnLine Bom 3132 regarding the guidelines issued by the corporation for following the procedure to take action under section 354A. He submits that the prescribed procedure for preparing panchanama and inspection report for taking action of demolition is not followed by the corporation. Thus, there is no material produced to support the corporation's contention that the suit structures are demolished. Hence, the plaintiffs would be entitled to interim protection as prayed.

SUBMISSIONS ON BEHALF OF THE CORPORATION:

5. The submissions made by the learned counsel for the corporation are summarised as follows;

a) The action initiated by the corporation by issuing the impugned notice is legal and valid. Sub-section (2) of Section 354A empowers the corporation to demolish

the offending structure within 24 hours. Hence, there is no question of issuing any speaking order immediately. In response to the notice issued under Section 354A, none of the occupants or the owner had submitted any documents indicating any permission for carrying out the ongoing work. Hence, the corporation had initiated demolition work, which is recorded in the demolition report produced on record. The very purpose of Section 354A is to take immediate action in view of the exigency of the situation regarding the unlawful construction commenced. The purpose of Section 354A is to take immediate action to stop unlawful construction commenced without taking permission.

b) In the suit filed by another occupant of the building, an interim order was passed by the City Civil Court on 29th July 2021, which records that demolition work was already initiated by the corporation. As per the pleadings in the present case, the plaintiffs were not even residing in the suit structures. The building is a cessed building and thus, protection is available only for the structure in existence before the datum line of 1st April 1962. As per the repair plan and the record maintained by MHADA, the building is authorised only up to the 5th floor, and hence, the structure in the building is protected till the 5th floor. The plaintiffs' structures are admittedly above the 5th floor.

c) There is no particular description of the appellants' structures in the plaint. However, according to the corporation, above the 5th floor, there is a mezzanine floor illegally constructed; hence, there is no floor above the 5th floor. As per the speaking order and the reply filed by the corporation to the notice of motion, all the structures above the 5th floor are unauthorised, and the building is authorised only up to the 5th floor. The corporation initiated demolition work, and as per the report, the demolition of the unauthorised construction above the 5th floor was completed by 30th June 2021. However, the structures were again reconstructed illegally, and thus, occupants above the 5th floor who illegally carried out the construction would not be entitled to any protection from the court. If, after issuance of notice under Section 354A, the construction illegally commenced is completed, the corporation is entitled to demolish it without any further notice. Hence, demolition work was initiated as contemplated under sub-section (2) of Section 354A and the same was completed. Therefore, any construction carried out by the appellants after demolition work is completed would not be entitled to any protection.

d) To support the action taken by the corporation, learned counsel for the appellants relied upon the decision of this court in the case of Abdul Razzaq Sunesra Vs Municipal Corporation of Greater Mumbai and Others 2014(1) Mh.L.J 275. Learned counsel for the appellants relied upon paragraph nos. 9 and 10 to contend that Section 354A confers the power to the Commissioner and discretion whether or not to demolish the unauthorized construction, if satisfied that the erection of the building or execution of the work has been unlawfully commenced or is being unlawfully carried out. If the concerned person fails to produce before the Designated Officer the relevant permission, the corporation is entitled to

remove or pull down the offending structure without further notice.

e) Learned counsel for the corporation further submits that this court, as per the legal principles settled in the decision of *Kangana Ranaut*, Section 354A deals with the stop work notice which applies to the ongoing work and to the emergent situations where the Designated Officer considers it necessary to stop the ongoing work which has been unlawfully commenced. Learned counsel for the corporation further relied upon the decision of the Hon'ble Apex Court in the case of *Sunbeam High Tech Developers Private Limited*. She submits that in paragraphs nos. 18 and 19, the Hon'ble Apex Court held that even if the rights of the private individual have been violated on the ground that sufficient notice for demolition was not given, in such cases, structures erected in violation of the law cannot be permitted to be re-erected. She submits that the Hon'ble Apex Court held that even when unauthorized structures are demolished without due notice compensation for the demolished structure or even the cost of the new structure to be raised, if any, can be imposed upon the municipal corporation which should be recovered from the erring officials, but the Hon'ble Apex Court held that in no eventuality should an unplanned structure can be permitted to be raised. Thus, the action taken by the corporation under Section 354A cannot be held to be illegal only on the ground that the notice to the affected person is not served. The purpose of Section 354A is to stop the construction commenced unlawfully. Therefore, on the ground of service of notice, the action under Section 354A cannot be held to be illegal.

f) Learned counsel for the corporation also relied upon the decision of the Hon'ble Apex Court in the case of *Muni Suvrat-Swami Jain S.M.P. Sangh Vs. Arun Nathuram Gaikwad and Others* (2006) 8 SCC 590. She submits that the Hon'ble Apex Court held that Section 354A deals with the stop work notice, whereas the provisions of Section 351 provide a show cause notice for demolition of unauthorised construction. As held by the Hon'ble Apex Court, Section 354A empowers the corporation to stop the work unlawfully commenced and thus, if no permission is shown by the person carrying out construction, the corporation can invoke powers under sub-section (2) of Section 354A and demolish the unauthorized construction as alleged in the notice under sub-section (1) of Section 354A.

g) With reference to the legal principles settled in the decision of *Sopan Maruti Thopte*, learned counsel for the corporation submits that as held by this court in paragraph nos. 27 and 28 of the judgment, the procedure established by law has to be followed by the public authorities and thus the procedural lapses if any, unintentional or intentional which do not seriously affect the substantive rights of a person shall not result in ad-interim orders which would protect the illegality having been already committed by a person. She thus submits that, as held by this court in the case of *Sopan Thopte*, violators of law cannot be liberally allowed to take the protection of the court by obtaining interim injunctions which would have the effect of continuing such violation.

h) Learned counsel for the corporation relied upon the decision of this court in the case of Tushar Guru Salien Vs State of Maharashtra PIL No. 67 of 2017 dated 28/8/2019 Pradeep Nandrajog CJ & Bharati Dangre J and submitted that this court held that merely pointing out the deficiencies in the notice or raising objections to the authority of the person issuing notice cannot be a ground to grant protection with respect to the structure against which the action is taken by the corporation on the ground that it is unauthorized. Learned counsel for the corporation relied upon the decision of this court in the case of Akramal Najibul Sarkar Vs The Municipal Corporation of Greater Mumbai AO No. 446 of 2018 dated 18th September 2018 Shalini Phansalkar-Joshi J, to support her contention that carrying out repairs and completing the construction without lawful procedural compliance, the parties would not be entitled to interim protection.

i) Learned counsel for the corporation, by referring to the facts in the present case, submitted that the construction above the 5th floor in the building is unauthorized as seen from the record of MHADA and the repair plan prepared by MHADA. She therefore submitted that the plaintiffs' contention regarding construction on the 7th floor clearly indicates that there is unauthorised construction carried out after the corporation completed the demolition work, which is evident from the demolition report produced on record. The corporation has already taken action against illegal reconstruction carried out after the demolition work was completed. Therefore, the corporation has lodged an FIR on 7th October 2021, which refers to the illegal construction carried out on the building after the demolition work was completed by the corporation pursuant to the suit notice. If the unauthorized construction is re-erected after the demolition work is completed pursuant to the notice under Section 354A, the corporation is empowered to demolish the same without any further notice. In such a situation, the corporation is required to maintain only the report of the demolition work carried out. Learned counsel for the appellants relied upon the decisions of this court in the case of N.H. Harsora Private Limited and Another Vs Designated Officer, Assistant Engineer(B &F) and Another 2020 SCC OnLine Bom 2780, Shriram Ramphal Patel Vs Municipal Corporation for Greater Bombay and Others 2006(1) Mh.L.J 33. By relying upon the said decisions, learned counsel for the corporation supported her submissions that the corporation is entitled to demolish the unauthorized construction in the event that the construction is re-erected after the notice under Section 354A is completed.

j) With reference to the submissions made on behalf of the learned counsel for the appellants on the illegality of the suit notice issued without satisfaction recorded as contemplated under sub-section (1) of Section 354A of the said Act, learned counsel for the corporation submitted that the satisfaction is not necessarily to be recorded in writing in view of the provisions of Section 342 of the said Act. The issuance of notice under sub-section (1) is based on the inspection report of the Designated Officer. Thus, the very fact of issuance of notice under Section 354A indicates the satisfaction of the Designated Officer in initiating action under Section 354A.

k) In the absence of any permission, the construction above the 5th floor is unauthorized as recorded in the speaking order dated 15th March 2022. As per the record of the demolition program, the demolition was completed on 30th June 2021. She thus submits that the action initiated under sub-section (1) of Section 354A has already been given effect by completing the demolition as contemplated under sub-section (2) of Section 354A of the said Act. Therefore, at this stage, there is no question of granting any protection to the appellants' structures, which the corporation has already demolished. Any reconstruction carried out by the appellants would not entitle the appellants to any protection in the absence of any documents indicating the lawful existence of any construction over and above the 5th floor. Therefore, the learned judge of the City Civil Court has rightly refused to grant any discretionary relief by clearly recording that the occupant of the building has carried out unauthorised construction over and above the 5th floor. Thus, considering the well-established principles, the appellants would not be entitled to any discretionary relief to protect the unlawful construction carried out above the 5th floor. Hence, no interference is warranted in the impugned order, and the appeal is therefore liable to be dismissed.

LEGAL POSITION:

6. Before considering the rival submissions, it is first necessary to examine the legal position on the powers under Section 354A of the said Act. Section 354A of the said Act reads as under:

"354A. Power of Designated Officer to stop erection of building or work commenced or carried on unlawfully.

(1) If the Designated Officer is satisfied that the erection of any building or the execution of any such work as is described in section 342 has been unlawfully commenced or is being unlawfully carried on upon any premises, the Designated Officer may, by written notice, require the person erecting such building or executing such work to stop such erection or work forthwith.

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

(3) In addition to the action that the Designated Officer may take under sub-section (2), he may, without further notice, cause to be removed any materials, machinery, equipment, devices or articles used in the process of erection of the building or execution of such work.

(4) If the expenses incurred by the Designated Officer under sub-section (2) and (3) are not paid within one month from the date of demand, such sum as remains unpaid shall be treated, as arrears of property tax and the procedure prescribed under this Act for recovery of arrears of property tax shall, mutatis mutandis, apply to the recovery of such unpaid sum.”

7. The object of Section 354A is revealed from its heading, which refers to the powers conferred upon the Designated Officer to stop the erection of a building or work commenced or carried on unlawfully. The plain reading of sub-section (1) of Section 354A indicates that, first and foremost, the Designated Officer has to be satisfied that the erection of a building or the execution of work as described in Section 342 has unlawfully commenced. Sub-section (1) of Section 354A starts with the word ‘if’. Thus, it is clear that a direction to stop work can be issued only if there is satisfaction that the work is unlawfully commenced. Such satisfaction can be arrived at after making an inquiry, which would necessarily mean that the Designated Officer is required to enquire whether any permission is granted by the competent authority, conduct a site visit and prepare a report containing the particulars of the alleged unlawful work. Thus, after necessary enquiry, if the Designated Officer is satisfied that the erection or work is unlawful, he has the power to forthwith stop the erection or the work as the case may be by issuing a written notice.

8. The purpose of such notice as contemplated under sub-section (1) of Section 354A is to prevent and prohibit unlawful erection or work. The satisfaction of the Designated Officer and the stop-work notice as contemplated under sub-section (1) is likely to result in a drastic consequence as contemplated under sub-section (2) of pulling down the building or the work. The satisfaction of the Designated Officer should therefore reflect in the contents of the written notice.

9. It is necessary to consider the language of Section 354A. The action of issuing a stop work notice as contemplated under sub-section (1), the action of removing or pulling down the building or the work as contemplated under sub-section (2), and the action to remove any materials, machinery, equipment, devices or articles as contemplated under sub-section (3) uses the word “may”. The word “shall” is used only for recovering the expenses if the erection of the building or the work is removed or pulled down as contemplated under sub-section (2). Thus, the power of the Designated Officer under Section 354A is discretionary; therefore, sub-section (1) contemplates satisfaction of the Designated Officer before issuing the stop-work notice. Thus, the contents of the notice must indicate the satisfaction of the Designated Officer that the erection or the work is unlawful. Hence, the notice must also contain a proper description of the alleged unlawful erection or work. The absence of a proper description of the alleged unlawful erection or work would reflect non-application of mind, raising doubts about the satisfaction of the Designated Officer before issuing the stop-work notice.

10. The Designated Officer is empowered under sub-section (2) of Section 354A

of the said Act to remove or pull down the alleged unlawful erection or work without giving further notice. The only requirement is to serve a stop-work notice as contemplated under sub-section (1) of Section 354A. As discussed in the above paragraphs the purpose of Section 354A is to prevent unlawful erection of building and unlawful execution of work as described in Section 342; hence the power to serve a notice to stop the erection or the work forthwith, is subject to satisfaction of the Designated Officer that the erection or the work is unlawful. However, the exercise of power to remove or pull down the erection or the work without any further notice is a drastic action. There can be various circumstances or justifiable reasons for being unable to produce the requisite permission within twenty-four hours from the service of the stop-work notice. For instance, a person is not served with the notice, or due to unavoidable circumstances is unable to produce the permission within twenty-four hours, or claims benefit under a deeming provision for the grant of permission, or any other justifiable reason. Therefore, the principles of natural justice must be followed to exercise the drastic power under sub-section (2) of Section 354A of the Act.

11. The immediate action contemplated under sub-section (1) is to stop the work forthwith. The language of sub-section (2) empowers the Designated Officer to take drastic action of demolition if the stop-work notice is not complied with or the permission is not produced within twenty-four hours of the service of notice. Now, the next question, therefore, would be the effective service of the notice as contemplated under sub-section (1) of Section 354A. The purpose of the written notice as contemplated under sub-section (1) of Section 354A is to direct the person erecting a building or executing work unlawfully to forthwith stop doing it and further remove the work as contemplated under sub-section (2), if found to be unlawful. The language of Section 354A says that the Designated Officer, by written notice, require the 'person' erecting a building or executing the work to stop the erection or the work forthwith. The words 'person' and 'owner' are defined in Section 3 (m) and (n) of the said Act as under;

"(m) "owner" when used in reference to any premises, means the person who receives the rent of the said premises, or who would be entitled to receive the rent thereof if the premises were let, and includes—

- (i) an agent or trustee who receives such rent on account of the owner, and
- (ii) an agent or trustee who receives the rent of, or is entrusted with, or concerned for, any premises devoted to religious or charitable purposes ; and
- (iii) a receiver, sequestrator, or manager appointed by any court of competent jurisdiction to have the charge of, or to exercise the rights of an owner of the said premises;

" (n) a person is deemed " to reside " in any dwelling which he sometimes uses, or some portion of which he sometimes uses, though, perhaps, not uninterruptedly, as a sleeping apartment;

and a person is deemed to cease " to reside " in any such dwelling merely because he is absent from it, or has elsewhere another dwelling in which he resides, if there is the liberty of returning to it at any time and no abandonment of the intention of returning thereto; "

12. In the said Act, the words 'person', 'owner' and 'occupier' are used depending upon the relevant action contemplated under the various sections under the said Act. Considering the object of Section 354A as discussed in the above paragraphs, the purpose of the written notice is to stop forthwith the erection of a building or the execution of the work, subject to the satisfaction of the Designated Officer that the erection or work is unlawful. Section 354A is invoked when an immediate action is required. Therefore, intimation in writing to stop the work is what is contemplated under sub-section (1). Thus, notice must be served on the person carrying out the work at the behest of the owner, i.e. the person whose name is recorded as owner in the official record, at whose behest the work is being done, or the recorded owner or the occupier of the offending structure/property, as he would be the person adversely affected if the Designated Officer takes the action under sub-section (2). The purpose of the service of notice under sub-section (1) of Section 354A is to immediately stop the work followed by the action contemplated under sub-section (2).

13. The manner of service of notice is provided in Chapter XIX of the said Act. The purpose of written notice is discussed in the above paragraphs, which requires intimation to the person as contemplated under sub-section (1) of Section 354A to stop the work forthwith. Thus, it is not mandatory to name the owner or occupier in the notice; however, proper service of the stop-work notice has to be served on the person erecting the building or executing the work or on the recorded owner or the occupier. Therefore, the procedure prescribed under Section 485 of the said Act would be applicable, which deals with how service will be effected on the owner or occupier of premises. Section 485 reads as under;

" 485. Service on "owner or occupier" of premises how to be effected When any notice, bill, schedule, summons or other such document is required by this Act, or by any regulation or by-law made under this Act, to be served upon or issued or presented to the owner or occupier of any building or land, shall not be necessary to name the owner or occupier therein, and the service, issue or presentation thereof shall be effected, not in accordance with the provisions of the last preceding section but as follows, namely :

(a) by giving or tendering the said notice, bill, schedule, summons or other document to the owner or occupier, or if there be more than one owner or occupier, to any one of the owners or occupiers of such building or land; or

(b) if the owner or occupier or no one of the owners or occupiers is found, by giving or tendering the said notice, bill, schedule, summons or other document to some adult member or servant of the family of the owner or occupier or of any one of the owners or occupiers; or

(c) if none of the means aforesaid be available by causing the said notice, bill, schedule, summons or other document to be affixed in some conspicuous part of the building or land to which the same relates. "

14. In the decision in J.R. Patel, this Court dealt with the challenge to the notice under Section 314 of the said Act on the ground that the proposed action of the corporation was in breach of the principles of natural justice and more particularly in the teeth of the dictum of the Constitution Bench of the Supreme Court in the case of Olga Tellis and others Vs Bombay Municipal Corporation and others. (1985) 3 SCC 545. This court relied upon the legal principles settled by the Hon'ble Apex Court in the decision of Olga Tellis, and held that it is obligatory on the authorities to give an opportunity to the appellants to produce material in support of their case as to why action under Section 314 of the said Act is not warranted. Section 314 of the said Act provides for the power to remove without notice anything erected, deposited or hawked in contravention of section 312, 313 or 313A. The Commissioner is empowered to take action, without issuing notice, for the removal of any structure or fixture which shall be erected or set up in or upon any street, or upon or over any open channel drain, well or tank contrary to the provisions of sub-section (1) of section 312.

15. In the case of Olga Tellis, the decision of the municipal corporation to demolish the huts was challenged by the petitioners on the ground that it is violative of Articles 19 and 21 of the Constitution of India. The petitioners had also asked for a declaration that the provisions of Sections 312, 313 and 314 of the said Act are invalid as violative of Articles 14, 19 and 21 of the Constitution of India. This court, in the decision J.R. Patel, held that the Hon'ble Apex Court interpreted Section 314 of the said Act and has read it down to save its validity. While dealing with the arguments on behalf of the corporation that it is the discretion of the commissioner to give or not to give a prior hearing to the occupants who are essentially encroachers and have no right to squat, this court in the decision of J.R. Patel, held in paragraph 8 as under:

"8. To my mind, this decision has not and could not be read to have diluted the legal mandate as enunciated by the Constitution Bench of the Apex Court in Olga Tellis case. In Olga Tellis case the Constitution Bench of the Apex Court has clearly observed that the ordinary rule is to observe audi alteram partem rule and it is only in exceptional cases when the Commissioner may find it appropriate that such procedure ought to be dispensed with- that he may do so by virtue of this provisions (S. 314). but, then such extra ordinary circumstances must be shown to exist at the relevant time and the burden is on the Commissioner to show that it did exist. In other words, only in exceptional cases the Commissioner may dispense with the requirement of audi altaram partem rule; and, therefore, in such cases the law would further require that the Commissioner shall contemporaneously hold reasons therefore unless reasons are recorded by the Commissioner, it will have to be presumed that the case was not an exceptional case so as to dispense with the procedure of audi alteram

partem, as enunciated by the Supreme Court in the above said Judgment. Whereas, when the Commissioner records reasons then, surely, judicial review of those reasons which persuaded the Commissioner to dispense with the procedure of fair play would be available. However, when no such reasons are recorded by the Commissioner before resorting to action under Section 314 of the Act, it would be preposterous to contend that the case nevertheless falls under exceptional category so as to dispense with the requirement of fair play. "

16. The Hon'ble Division Bench of this Court in the case of Mohd. Sayed Mohd. Salim Nagori Rizvi, followed the legal principles settled by the Hon'ble Apex Court in the decision of Olga Tellis, and held that the action under Section 314 of the said Act, must be flawed as there is no justification of urgency and/or requirement of expeditious removal of the subject premises without prior notice, on the ground that it was affecting streets, pavements or other similar conveniences.

17. By the decision relied upon by the learned counsel for the appellants in the case of Sopan Maruti Thopte, a reference made to the Division Bench is decided, on the question whether it is obligatory to give a personal hearing or early hearing to the parties after notice under clause (a) of sub-section (1) of Section 351 of the said Act is issued. The Hon'ble Division Bench held that when notice under Section 351 is given, fifteen days time shall be given to submit a reply, and if no sufficient cause is shown, the municipal authority shall give short reasons for not accepting the contention of the affected party. The Hon'ble Division Bench issued guidelines for taking further action for demolition. In the decision of Sub Vijay International Pvt. Ltd ., this court held that the guidelines issued in the decision of Sopan Maruti Thopte are based on fair play by the local authorities and are binding upon the municipal corporation. This Court further held that the purpose of issuing notice under Section 354A to stop work and produce valid permission is to enable the person to satisfy the commissioner that the work is pre-existing work carried out after obtaining the necessary permission. Thus, this court held that even dehors the decision in the case of Sopan Maruti Thopte, the principle of fairness requires the municipalities and the corporation to give a reasonable notice to the person concerned before taking the action of demolition.

18. In the decision relied upon by the learned counsel for the appellants in the case of Ramanlal Bhailal Patel, the Hon'ble Apex Court was dealing with the word 'person' in the context of Gujarat Agricultural Lands Ceiling Act 1960. The Hon'ble Apex Court after discussing the general and ordinary meaning of the word 'person' and the General Clauses Act, held that the general legal definition of the word 'person' is either modified or restricted or expanded in different statutes with reference to the object of the enactment or the context in which it is used. In the decision of Industrial Supplies Pvt. Ltd., the Hon'ble Apex Court was dealing with the interpretation of the words 'owner' and 'occupier' with reference to the Coking Coal Mines (Nationalisation) Act 1972 and The Mines Act

1952. The Hon'ble Apex Court held that when legal fiction is incorporated in a statute, the court, after ascertaining the purpose, must give full effect to the statutory fiction and carry it to its logical conclusion.

19. In the decision of State Bank of India Vs Rajesh Agarwal, the Hon'ble Apex Court has laid down legal principles regarding the nature, scope and applicability of the principles of natural justice in general, and the rule of audi alteram partem in administrative action having civil consequences. The appeals before the Hon'ble Apex Court were filed to challenge The Reserve Bank of India (Frauds Classification and Reporting by Commercial Banks and Select FIs) Directions 2016 ("Master Directions"), issued by the Reserve Bank of India. The Hon'ble Apex Court, while considering whether the principles of natural justice should be read into the provisions of the Master Directions on Frauds, held that audi alteram partem has several facets, including the service of a notice to any person against whom a prejudicial order may be passed and providing an opportunity to explain the evidence collected. It is also held that administrative proceedings which entail significant civil consequences must be read consistently with the principles of natural justice to meet the requirement of Article 14. It is further held that where possible, the rule of audi alteram partem ought to be read into a statutory rule to render it compliant with the principles of equality and non-arbitrariness envisaged under Article 14 of the Constitution of India.

20. In the Hon'ble Apex Court's decision of Sunbeam High Tech Developers (P) Ltd, the issue involved was that if a Municipal Corporation demolishes a structure in exercise of powers vested in it but in violation of the procedure prescribed, whether the High Court can direct the owner/occupier of the building to reconstruct the demolished structure. The Hon'ble Apex Court referred to the judgment of this court in the case of Sopan Thopte, and held that timelines were fixed of fifteen days each for issuing a show-cause notice and, thereafter, to take action of demolition. It is further observed that the legislature thereafter intervened and the first period is curtailed to seven days, but the second direction has not been interfered with by the legislature. Thus, the Apex Court held that the Judgment of Sopan Thopte continues to hold the field in that regard. The second direction that holds the field is that it would be open to the Commissioner to demolish the offending structure fifteen days after the order is communicated to the affected person. The Hon'ble Apex Court issued directions in paragraph 24 regarding the manner in which the evidence of illegal construction/ reconstruction etc, is collected and notices are issued and served. The directions issued by the Apex Court provide for service of notice upon the owner/occupier/builder/ contractor/architect, etc, about the alleged unauthorised work. The directions also provide for 7 days notice before demolition of the property, if the reply to the notice is not satisfactory. The Hon'ble Apex Court also issued directions regarding the manner in which the evidence of illegal construction/reconstruction, etc., is collected and notices are issued and served. The relevant directions are in paragraph 24, which reads as under;

"24. We also would like to give further directions regarding the manner in which the evidence of illegal construction/reconstruction etc., is collected and notices are issued and served. We, therefore, issue the following directions:

24.1 It will be obligatory for all Municipal Corporations in the State of Maharashtra where the population is 50 lakhs or more to get geomapping and geo-photography of the areas under their jurisdiction done within a period of one year. Geomapping will also be done of an area of 10 Kms. from the boundary of such areas. The records should be maintained and updated by the Municipal Corporations within such time period as the Municipal Corporation deems fit, keeping in mind the specific circumstances of the area under its jurisdiction.

24.2 Whenever any new area, which is not already geomapped, is brought under the jurisdiction of a particular municipality, it will be the duty of the concerned Municipal Corporation to ensure that geomapping of the area is conducted and the geomapping records of such area are created at the earliest.

24.3 In cases where buildings are already existing and it is alleged by the Municipal Corporation that the building has been constructed in violation of applicable laws:

24.3.1 The Commissioner/Competent Authority on coming to know that an illegal building has been constructed, shall issue a show cause notice giving 7 days in terms of Section 351 to the owner/occupier/builder/contractor etc. Along with this notice the Commissioner/Competent Authority shall also send photographs and visual images taken on the site clearly depicting the illegal structure. Photographs and images should digitally display the time and date of taking the photographs;

24.3.2 In case the notice is not replied to within the time prescribed, i.e., 7 days, then the building shall be immediately demolished by the Municipal Corporation;

24.3.3 In case the owner files a reply to the notice, the Commissioner/Competent Authority of the Municipal Corporation shall consider the reply and pass a reasoned order thereon. In case the reply is not found satisfactory then the order shall be communicated in the manner laid down hereinafter to the owner/occupier/builder/contractor etc. giving him further 15 days' notice before demolition of the property. During this period the owner/occupier/builder/contractor etc. can approach the appellate/revisional authority or the High Court.

24.4 In those cases where according to the municipal corporation there is ongoing construction which is being carried on in violation of the applicable laws:

24.4.1 The Commissioner/Competent Authority on coming to know that there is ongoing construction in violation of the applicable laws shall issue a show cause notice giving 24 hours in terms of Section 351 to the owner/occupier/builder/contractor/architect etc. Along with this notice the Commissioner/Competent Authority shall also send photographs and visual images taken on the site clearly depicting the illegal structure. Photographs and images should digitally display

the time and date of taking the photographs;

24.4.2. The Commissioner/Competent Authority can also issue an interim 'stop-construction' order along with the notice or any time after issuing the notice. Such order shall also include the relevant pictures of the alleged violation(s). Photographs and images should digitally display the time and date of taking the photographs;

24.4.3. In case the notice is not replied to within the time prescribed, i.e., 24 hours, then the building shall be immediately demolished by the Municipal Corporation;

24.4.4. In case the owner/occupier/builder/ contractor/architect etc. files a reply to the notice, the Commissioner/Competent Authority of the Municipal Corporation shall consider the reply and pass a reasoned order thereon. In case the reply is not found satisfactory then the order shall be communicated in the manner laid down hereinafter to the owner/occupier/builder/contractor/architect etc. giving him further 7 days' notice before demolition of the property. During this period the owner/occupier/builder/contractor/architect etc. can approach the appellate/revisional authority or the High Court.

24.5. In regard to service of notice we direct as follows:

24.5.1. Wherever possible notice shall be served personally on the person who is raising or has raised the illegal structure including the owner/occupier/builder/ contractor/architect, etc.

24.5.2. Notice, in addition to the traditional mode, can also be sent through electronic means, both by email and by sending a message on the mobile phones. Even a message to a foreman or person in charge of the construction at the site will be deemed to be sufficient notice.

24.5.3. In the notice, the municipal authorities shall also give an email ID and phone number where the noticee can send his reply through email or messaging services. This will hopefully do away with all disputes with regard to alleged non-service of notice."

emphasis applied by me

21. In a recent judgment in the case of *Zulfikar Haider and Another Vs State of Uttar Pradesh and others* 2025 SCC Online SC 766, the Hon'ble Apex court was dealing with the high-handed and illegal demolition of residential structures purportedly taken under Section 27 of the Uttar Pradesh Urban Planning and Development Act, 1973. The Hon'ble Apex Court observed that the demolition order was not served upon the appellants and was allegedly served by affixing only. It was further observed that within 24 hours of the service of the communication, an action of demolition was taken on a Sunday, depriving the appellants of their opportunity to avail of the remedy of appeal under sub-Section (2) of Section 27 of the 1973 Act. The Hon'ble Apex Court relied upon

the law laid down by the Apex Court in the case of In Re : Directions in the matter of demolition of structures 2024 SCC Online SC 3291 in paragraph 91A of the said judgment, which reads thus:

"91. At the outset, we clarify that these directions will not be applicable if there is an unauthorized structure in any public place such as road, street, footpath, abutting railway line or any river body or water bodies and also to cases where there is an order for demolition made by a Court of law.

A. NOTICE

i. No demolition should be carried out without a prior show cause notice returnable either in accordance with the time provided by the local municipal laws or within 15 days' time from the date of service of such notice, whichever is later.

ii. The notice shall be served upon the owner/occupier by a registered post A.D. Additionally, the notice shall also be affixed conspicuously on the outer portion of the structure in question.

iii. The time of 15 days, stated herein above, shall start from the date of receipt of the said notice.

iv. To prevent any allegation of backdating, we direct that as soon as the show cause notice is duly served, intimation thereof shall be sent to the office of Collector/District Magistrate of the district digitally by email and an auto generated reply acknowledging receipt of the mail should also be issued from the office of the Collector/District Magistrate. The Collector/DM shall designate a nodal officer and also assign an email address and communicate the same to all the municipal and other authorities in charge of building regulations and demolition within one month from today.

v. The notice shall contain the details regarding:

a. the nature of the unauthorized construction.

b. the details of the specific violation and the grounds of demolition.

c. a list of documents that the notice is required to furnish along with his reply.

d. The notice should also specify the date on which the personal hearing is fixed and the designated authority before whom the hearing will take place;

vi. Every municipal/local authority shall assign a designated digital portal, within 3 months from today wherein details regarding service/pasting of the notice, the reply, the show cause notice and the order passed thereon would be available.

(emphasis added)"

22. The Hon'ble Apex Court in the decision of Zulfiqar Haider, thus held in paragraph 12 as under;

"12. The authorities, especially the development authority, must remember that the right to shelter is also an integral part of Article 21 of the Constitution of India. This right can be taken away only by following due process of law. Moreover, our country is governed by the rule of law, which is an integral part of the basic structure of the Constitution. The residential structures of citizens cannot be demolished in such a summary manner without following the principles of natural justice. As stated earlier, no efforts were made to make the personal service of the show cause notice. Although the option of sending it by registered post was available, it was not exercised. The same is the case with the order dated 8th January, 2021, directing the demolition. On the very day, it was stated to be served by affixing. A copy thereof was not sent by the registered post. Only the communication dated 1st March, 2021, was sent by the registered post, which was served upon the appellants on Saturday, 6th March, 2021. Within twenty-four hours of the service of the said communication, the structures were brazenly demolished."

emphasis applied by me

23. In Kangana Ranaut's decision, this court dealt with the challenge to the notice issued under Section 354A of the said Act and the speaking order. This court analysed the distinction between the applicability of Sections 351 and 354A and referred to the Circular dated 15th March 2012 issued by the corporation laying down the guidelines for the procedure to be followed for action to be taken under the said two provisions. By referring to the relevant procedure prescribed for taking action under Section 354A, this court held that when the concerned officer detects the unlawful work, he has to take photographs showing the date and status of the work and prepare a Panchanama/Inspection Report of the work in progress, then make an entry to that effect in detection register and then prepare a notice under Section 354A of the said Act. Thus, from the observations of this court, by referring to the guidelines issued by the corporation, it is clear that satisfaction of the Designated Officer about the unlawful work is necessary before issuing notice under Section 354A, and the satisfaction should reflect from the contents of the notice giving particulars of the alleged unlawful work.

24. Therefore, considering the well-settled legal principles as discussed above, the service of notice contemplated under sub-section (1) of Section 354A must be served by tendering it to the person/builder/contractor erecting the building or carrying out the work or to the recorded owner at whose behest the erection or work is carried out or to the occupier of the offending structure/property. Considering the serious consequences contemplated under sub-section (2) of Section 354A, the obligation of proper service of notice is upon the Designated Officer by following the procedure prescribed under Section 485. Thus, all efforts must be made to first effect service by a regular mode of personal service upon the person carrying out the work, or the recorded owner or the occupier of the offending structure/property. Only if the person carrying out the work, or the recorded owner or the occupier of the offending structure/property is not found,

the personal service can be effected on some adult member of their family or servant of their family. Despite diligent efforts, if personal service is not possible, only then can the alternate mode of service, by pasting, be adopted. While adopting the alternate mode of service by pasting, a panchanama/memorandum shall be recorded in writing in the presence of witnesses. In case, a reply is submitted in response to such notice served, the Designated Officer shall consider the reply and documents, if any and pass a reasoned order. If the reply is not satisfactory, then the order shall be communicated to the person/builder/contractor erecting the building or carrying out the work or to the recorded owner at whose behest the erection or work is carried out or to the occupier of the offending structure/property, giving seven days time, to enable him to adopt appropriate remedy as permissible in law.

25. The decisions relied upon by the learned counsel for the corporation in the cases of N.H. Harsora Pvt. Ltd., Shriram Ramphal Patel and Akramal Najibul Sarkar are based on different facts of the said cases and thus are not relevant to the rival contentions in this case and the legal principles examined in the present case.

26. In the decision of Abdul Razzaq Sunesra, this court upheld the constitutional validity of Section 515A of the said Act. This court, while dealing with the constitutional validity of Section 515A regarding bar of civil court's jurisdiction, discussed the provisions of Section 351 and Section 354A and referred to the decision of the Hon'ble Apex court in the case of Muni Suvrat – Swami Jain S.M.P. Sangh. The Hon'ble Apex Court in paragraph 57 of the judgment held that Section 351 of the said Act obliges the Municipal Commissioner, if the construction of any building or the execution of any work is commenced contrary to the provisions of the Act, to give show cause as to why the construction should not be pulled down. It is further held that if sufficient cause is not shown, the Commissioner exercises the discretion to decide whether or not to demolish the unauthorized construction, if satisfied that the erection of the building or execution of the work has been unlawfully commenced or is being unlawfully carried out. Therefore, it was held that the High Court cannot impede the exercise of that discretion by the issuance of a mandatory order to demolish the construction.

CONSIDERATION OF SUBMISSIONS AND ANALYSIS:

27. In the present case, the suit notice dated 21st October 2020 is addressed to "Owner/Occupier/Landlord/Tenant" without naming any person; however, the address of the building is mentioned. The contents of the notice appear to be a standard format alleging that "you have unlawfully commenced/been unlawfully carrying on, erection of building/erection of work described in the schedule below located at the above mentioned address". The description of the work in clause (1) of the schedule of the notice says that ; "Unauthorised reconstruction of Building by using RSJ section, Ladi Coba slab and brick masonry wall' without permission from the competent authority".

28. A plain reading of clause (1) in the schedule indicates that the allegation is of unauthorised reconstruction of the building. The sketch in the schedule depicts the entire building. The other clauses in the schedule are an intimation of the proposed action as contemplated under sub-section (2) of Section 354A. The speaking order is passed on 15th March 2022, after seventeen months from the date of the stop-work notice. The speaking order addressed to "Owner/Occupier" refers to letters dated 23rd July 2021, 4th August 2021, 13th October 2021 and 14th December 2021 in reply to the suit notice. After recording particulars of documents in a tabular format, the conclusions in the last two paragraphs record that though the notice was alleging reconstruction of the building, after going through the work order and repair plan of MHADA, it can be concluded that the construction above 5th floor is unauthorised.

29. A plain reading of the conclusions recorded in the speaking order indicates that the Designated Officer was satisfied that there was no reconstruction of the building as alleged in the notice. The Designated Officer, on verifying the work order and repair plan of the Executive Engineer of the MHADA board, concluded that the construction above the 5th floor was unauthorised. However, in the last paragraph, it was observed that the notice work was unauthorised. Thus, the contents of the notice and the speaking order neither reflect application of mind nor satisfaction based on any reasons that any unlawful work was carried out.

30. The plaintiffs' contentions are basically twofold: first, that the building has been in existence since before 1958 and that only repair work was carried out, and second, that the notice was not served upon the plaintiffs. The plaint contains detailed pleadings regarding the use of the suit structure since before 1958 as a tenant. The plaintiffs relied upon various documents, including rent receipts, to support their contention that their structures, which have existed since before 1958, are situated on the 6th floor and the 7th floor, which is an attic floor. The plaintiffs have produced on record copies of a notice dated 9th May 1994 issued by the corporation under Section 351 of the said Act alleging that the 6th floor of the building is unauthorised, a reply to the said notice and a letter dated 12th July 1994 issued by the corporation intimating that the notice is dropped. The plaintiffs have pleaded regarding the various permissions of competent authorities regarding the building to support their contentions that the building always existed and only repair work was carried out. The plaintiffs also pleaded that due to major repair work carried out and due to the Covid-19 pandemic, they could not live in their respective suit structures due to their old age and thus were required to shift to their relative's place temporarily upto March 2022. They further pleaded that only on 29th April 2022, they learnt about the notice and the speaking order, when the demolition was scheduled with police protection. Hence, it appears that sometime in April 2022, the suit was filed to challenge the notice and the speaking order. The plaintiffs also prayed for a temporary injunction to protect the suit structures from demolition.

31. In response to the plaintiffs' pleadings, the corporation contended that due

procedure was followed before issuing the notice and the speaking order and that the plaintiffs failed to produce any evidence regarding any permissions. It was pleaded that the notice was served upon the addressee on 23rd October 2020, and the receipt was acknowledged. The corporation referred to a joint inspection with MHADA officials, work order and repair permissions and the record regarding assessment to contend that the building was only of ground plus four floors. It is further pleaded that the inspection conducted on 11th May 2021 and 5th August 2021 revealed that construction above the 5th floor was in progress; hence, demolition was carried out on various dates from 24th May 2021 to 11th January 2022 by making the 6th floor unserviceable.

32. It is necessary to examine the pleadings in detail, which refer to a suit filed by another occupant and an interim relief passed in that suit on 29th July 2021, directing the corporation to pass a speaking order. It is thus contended that thereafter, the speaking order was passed on 15th March 2022. The corporation has also relied upon an Order dated 6th April 2022 passed by this Court in Appeal From Order No. 305 of 2022 arising from an interim order passed in another suit by an occupant of the 2nd floor. This court disposed of the appeal by recording the statement on behalf of the corporation that the structure on the 2nd floor was not covered under the notice and the speaking order.

33. Section 354A deals with a notice to stop the ongoing work, whereas Section 351 deals with a show cause notice for demolition of unauthorised constructions. Thus, there is a distinction between the applicability of these sections. Hence, I do not find any substance in the arguments of the learned counsel for appellants that if immediate action is not taken pursuant to the notice under sub-section (1), and the construction is complete or the alleged construction or work is not found to have been continued, the provision of Section 351 of the said Act will come into play, and the notice under Section 354A cannot be pursued further. The consequential action for non-compliance with the notice under sub-section (1) is provided under sub-section (2) of Section 354A.

34. However, in the present case, the corporation contends that demolition work was done well before the passing of the speaking order. Therefore, it is clear that the powers under sub-section (2) of Section 354A were exercised by the Designated Officer without following the principles of natural justice. The stop-work notice under sub-section (1) is dated 21st October 2020, alleging that there is unauthorised reconstruction of the building. The corporation pleads about site inspection on 11th May 2021 and then on 5th August 2021, which, according to the corporation, showed construction in progress above the 5th floor. According to the corporation, the first demolition was carried out on 25th May 2021, much before the speaking order dated 15th March 2022. The speaking order records that the building, upto the fifth floor, is authorised. No material was produced to indicate that proper service of the stop-work notice was done on the person carrying out the alleged unlawful work, the owner, or the occupier. No material was produced to indicate that the satisfaction contemplated under sub-section

(1) was recorded before the stop-work notice was issued. The contention that demolition was carried out even before a speaking order indicates non-application of mind in as much as the notice alleges reconstruction of the building and the speaking order records a conclusion that the building upto the fifth floor is authorised. Thus, prima facie, neither satisfaction as contemplated under sub-section (1) is seen before issuing the stop-work notice, nor are the principles of natural justice followed by proper service of notice.

35. The impugned judgment and order does not deal with the basic principles of prima facie case, irreparable loss and balance of convenience. The learned trial judge has not even referred to whether the basic requirements are satisfied, justifying the action under Section 354A. The learned Judge relied upon the observations of this Court while rejecting the appeal filed by the plaintiffs to challenge the refusal to grant ad-interim protection. The learned trial judge did not examine the material on record on the ground that the trial court and this court at the ad-interim stage have already dealt with the documents relied upon by the plaintiffs. In my view, the learned trial judge erred in completely ignoring that the scope at the stage of considering ad-interim relief and the scope at the time of final hearing of the application for interim relief are different. Thus, refusal to grant ad-interim relief is no ground to deny interim relief, if the case is made out in law to grant interim relief.

36. Learned counsel for the corporation relied upon an order in the case of Tushar Guru Salien, which is an order in a Public Interest Litigation concerning grievances about the gross unauthorized constructions and ad-interim protection granted in the pending suits. The Hon'ble Division Bench of this court in the PIL, therefore, clarified the legal position in paragraph 5, which reads as under:

"5] Concerning a property, a suit to enforce or protect an interest in the property which is governed by a Municipal Statute, the interest protected has to be with respect to a plea that prim-facie, the structure which is being targeted is an authorized structure. Meaning thereby, the plaint must make an averment of the sanction obtained from the Corporation and must make an averment that the structure targeted is prima-facie governed by the sanction. Merely pointing out deficiencies in the notice or the authority of the person issuing the notice is neither here nor there. Thus, the sine qua non of such kinds of suits is a positive assertion made with reference to the sanctioned building plans."

37. In the present case, there is strong, prima facie, material on record to show that the suit structures existed since before 1958. The detailed pleadings by the plaintiffs and the material on record further reveal various orders of competent authorities regarding the building, including the repair permission by MHADA and the work order for extensive repairs. In the speaking order, the Designated Officer has not dealt with the notice of 1994 under Section 351 of the said Act, the reply and the corporation's letter intimating that the notice is dropped, only on the ground that the same is not available in the corporation's record. The learned trial judge also did not consider the said documents on the ground that

at the ad-interim stage, the same was considered by the trial court and this court while refusing to grant ad-interim relief. Thus, considering the plaintiff's pleadings and the strong prima facie material produced on record by the plaintiffs, they would be entitled to interim protection.

38. Learned counsel for the corporation referred to the order dated 29th July 2021, passed by the trial court in Suit St. No. 5604 of 2021, filed by another occupant of the same building, challenging the suit notice. The trial court directed the Designated Officer to follow the due process of law, consider the reply and documents of the plaintiff in that suit and pass a final speaking order on the notice dated 21st October 2020, which is the same notice impugned in the present case. The trial court further directed the parties to maintain the status quo in the meantime. It is pertinent to note that when the said order was passed on 29th July 2021, the corporation did not contend that any demolition work had already been carried out in May 2021, as sought to be contended in the present case.

39. Disputed facts are involved regarding the extent of demolition work. However, by relying upon the demolition reports and the attached photographs, it is contended by the corporation that demolition work above the 5th floor was carried out by making the 6th floor unserviceable. Thus, according to the corporation, demolition was done by making the 6th floor unserviceable. No valid material is produced to indicate that demolition was done after following the due procedure. The material on record does not show that the principles of natural justice were followed by service of necessary notice as discussed in the above paragraphs. Thus, prima facie, demolition work undertaken by the corporation is illegal.

40. The conclusions on the legal principles to be followed for taking action under Section 354A of the said Act are summarised as below;

a) When the concerned officer detects unlawful work, he has to take photographs showing the date and status of the work, prepare a Panchanama/Inspection Report of the work in progress, make an entry to that effect in the detection register, and prepare a notice under sub-section (1) of Section 354A of the said Act.

b) The contents of the notice under sub-section (1) must indicate that the concerned officer is satisfied about the alleged unlawful work, warranting a stop-work notice. The stop-work notice under sub-section (1) of Section 354A must contain particulars of the alleged unauthorised work.

c) Before initiating the action as contemplated under sub-section (2), the principles of natural justice must be followed by giving an opportunity to show cause why the action as contemplated under sub-section (2) should not be taken. Therefore, the service of notice contemplated under sub-section (1) of Section 354A must be served by tendering it to the person/builder/contractor erecting the building or carrying out the work or to the recorded owner at whose

behest the erection or work is carried out or to the occupier of the offending structure/property.

d) Considering the serious consequences contemplated under sub-section (2) of Section 354A, the obligation of proper service of notice is upon the Designated Officer by following the procedure prescribed under Section 485. Thus, all efforts must be made to first effect service by a regular mode of personal service upon the person carrying out the work, or the recorded owner or the occupier of the offending structure/property. Only if the person carrying out the work, or the recorded owner or the occupier of the offending structure/property is not found, the personal service can be effected on the some adult member of their family or servant of their family. Despite diligent efforts, if personal service is not possible, only then can the alternate mode of service, by pasting, be adopted. While adopting the alternate mode of service by pasting, a panchanama/memorandum shall be recorded in writing in the presence of witnesses.

e) In case, a reply is submitted in response to such notice served, the Designated Officer shall consider the reply and documents, if any and pass a reasoned order. If the reply is not satisfactory, then the order shall be communicated to the person/builder/contractor erecting the building or carrying out the work or to the recorded owner at whose behest the erection or work is carried out or to the occupier of the offending structure/property, giving seven days time, to enable him to adopt appropriate remedy as permissible in law.

f) Demolition work, if any, carried out, should be supported by the necessary record showing that the panchamna and the Inspection Report were prepared and the procedure prescribed by the directions issued in the Hon'ble Apex court's decision in the case of Re: Directions in the matter of demolition of structures is followed.

41. One of the cardinal principles for the grant of a temporary injunction is satisfaction of the court that non-interference would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. In the present case, if an interim injunction is not granted, the plaintiffs would be deprived of their fundamental right of residence, which cannot be adequately compensated by way of damages. The condition of the balance of convenience also favours granting the injunction, in as much as refusal may result in complete demolition of the plaintiffs' residential structures. There is ample prima facie material to support the plaintiffs' contentions, which they would be able to prove by leading evidence. Thus, when competing possibilities and probabilities of likelihood of injury are weighed, the suit structures should be maintained in the status quo. Thus, this is a fit case to exercise the discretion in granting the interim injunction pending the suit.

42. However, considering the disputed questions on facts regarding the extent of

the demolition work carried out, at this stage, an injunction cannot be granted as prayed. However, the plaintiffs are entitled to interim protection by restraining the corporation from carrying out any further demolition. At the same time, the plaintiffs also cannot change the status of the suit structures.

43. Hence, for the reasons recorded above, the Appeal is allowed by passing the following order:

- a) The impugned judgment and order dated 23rd August 2024 passed by the learned Judge of the City Civil Court, Greater Bombay in Notice of Motion No. 1822 of 2022 in L.C.Suit No. 4165 of 2024 is quashed and set aside.
- b) During the pendency of the suit, no further demolition of the plaintiffs' structures shall be carried out.
- c) During the pendency of the suit, the plaintiffs shall not make any changes or modifications to the suit structures or carry out any construction without permission from the trial court.
- d) Notice of Motion No. 1822 of 2022 in L.C.Suit No. 4165 of 2024 is disposed of in the above terms.