

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 3011 OF 2020

(Under Article 226 of The Constitution of India)

Ms. Kangana Ranaut ... Petitioner

Versus

Municipal Corporation of Greater Mumbai & Ors. ... Respondent

**AFFIDAVIT IN REJOINDER OF THE PETITIONER TO THE REVISED AFFIDAVIT
IN REPLY DATED 17TH SEPTEMBER,2020 OF THE RESPONDENT NO.2 AS AN
OFFICER OF RESPONDENT NO.1: -**

- (1) I say that I am fully conversant with the facts of the above matter and I am competent to file the present Affidavit in Rejoinder. I say that I am filing the present Affidavit in Rejoinder (“**Rejoinder**”) for the limited purpose of replying to the contents of the Revised Affidavit in Reply dated 17th September,2020 (“**Revised Reply**”) which is filed by the Respondent No.2(who is the officer of Respondent No.1) in response to the amended Writ Petition dated 14th September,2020 (“**Amended Writ Petition**”). I crave leave of this Hon’ble Court to file an additional affidavit, if and when necessary. I have read the copy of the Revised Reply along with annexures, filed by the Respondent No.2 and in Reply thereto, I have to state and submit as under: -
- (2) At the outset, I repeat and reiterate herein the contents of the Amended Writ Petition and the original Writ Petition which was filed on 9th September,2020 as if the same forms part and parcel of the present Rejoinder and deny anything stated in the Revised Reply as well as the Affidavit in Reply dated 10th September,2020 of the Respondent No.2 (“**Affidavit in Reply dated 10th September,2020**”), that is contrary to what has been

stated by me in Amended Writ Petition, original Writ Petition and the present Rejoinder. I crave leave of this Hon'ble Court to refer to and rely upon the exhibits to the Amended Writ Petition and the Affidavit in Reply as and when necessary.

- (3) At the further outset, I deny all the averments, allegations, submissions and contentions made in the Revised Reply as well as the Affidavit in Reply dated 10th September,2020 and nothing shall be deemed to have been admitted by me unless specifically admitted herein below or for want of specific traverse. At the outset, I also state that to maintain brevity and to avoid repetition, wherever in this Rejoinder, I am stating that I deny any statement or that I repeat what is stated earlier and herein, I may be deemed to have also stated "I repeat and reiterate herein the contents of the Amended Writ Petition and deny anything that is stated by the Respondent in the Revised Reply and Affidavit in Reply dated 10th August,2020 that is contrary to what has been stated by me in the Amended Writ Petition and herein"
- (4) I say that most of the contents of the Revised Reply are repetitive in nature, as the Respondent No.1 and 2 has already produced the same in their Affidavit in Reply dated 10th September,2020. I say that the Revised Reply and the Affidavit in Reply dated 10th September,2020 filed by the Respondent no.2 is devoid of any merits and fails to meet the case made out by me in the Amended Writ Petition. I have already dealt with a large part of the contentions in my Amended Writ Petition and in order to avoid repetition, I am not stating those again.
- (5) Respondent No.1 and 2 have no answer to any of the discrepancies that have been pointed out by me in my Amended Writ Petition. Instead, the Respondent No.1 and 2 have reproduced only parts of sentences of my Amended Writ Petition, tried to misrepresent my contentions therein and then have tried to meet them. The Revised Reply of the Respondent No.2 is a last ditch attempt on the Respondents' part to cover up their ex facie illegal acts.
- (6) The Impugned Notice dated 7th September,2020 ("**Impugned Notice**") issued by the Respondents and the action taken by them show scant regard for the statutory provisions, the guidelines issued by the Respondent No.1 itself as also the various directions of this

Hon'ble Court. The law clearly requires photographs of the alleged violation(s) digitally displaying the time and date. Except for two photographs which do not show any alleged violation, no other photograph is produced. Furthermore, the purported First Inspection Report and the Impugned Notice purports to annex a sketch which is missing. The deponent in paragraph 7(i) of the Revised Reply admits that the prescribed format of the notice requires a sketch to be annexed and that in the present case there was no sketch. There is no explanation as to why there is such a deviation from the established norm. On being pointed out that the time and date of detection mentioned in the Affidavit in Reply dated 10th September,2020 and that in purported First Inspection Report do not match, the deponent has sought to justify the same by giving an ex -facie false explanation that the time and date of detection mentioned in the purported First Inspection Report is "the date and time at which it is uploaded on the system and not the date and time of physical detection/ inspection on the site". It is pertinent that though the format of Report uploaded requires the Name and Description of the Inspection officer, even the same is left blank.

- (7) Further, the deponent has at every stage tried to improve the case by making incorrect statements to justify the illegal acts. Though there is no mention of the number of workers/nature of material allegedly available at site, in the Affidavit in Reply dated 10th September,2020 which was filed by the deponent first, the deponent mentioned that at time of inspection "workmen, materials and tools were present". No photographs of such workmen (except one doing leakage control) or material/tools was produced. In the Revised Reply, the deponent has once again falsely tried to improve their case by stating that there were "6 workmen present along with materials such as plywood and that renovation and finishing work was going on "virtually in the entire premises including the unlawful addition and alterations". The deponent has clearly perjured himself to justify the illegal actions. Infact the list of the alleged work mentioned in the Impugned Notice itself demonstrates and establishes that there was no 'ongoing work'.
- (8) Without prejudice to the aforesaid contentions, I shall now deal para-wise respond to the Revised Reply: -

- a) With reference to paragraph 1, I say that the same is a matter of record and does

not merit any response.

- b) With reference to paragraph 2, I say that the original Writ Petition was filed in extreme urgency on 9th September, 2020 in order to inter alia restrain the Respondents from illegally, arbitrarily and malafidely demolishing the said Bungalow. It was in these circumstances that this Hon'ble Court granted leave to amend, which has been done.
- c) With reference to paragraph 3(a) of the Revised Reply, I repeat what is stated earlier and herein. I specifically deny that the Writ Petition and the reliefs sought for therein constitute an abuse of process. I specifically deny that the record established that the Petitioner has unlawfully made substantial alterations and additions to the property, contrary to the sanctioned building plan. I deny that alleged illegal work as alleged or at all was being carried on. I put the Respondents to the strict proof thereof. I deny that the sanctioned plans establish that illegal work was carried out. I say that had the Respondents given me a fair opportunity as required in law, I would have been able to respond to their allegations after taking appropriate advice from experts. The invocation under section 354A of the Mumbai Municipal Corporation Act ("MMC Act") was done illegally by the Respondent No.1 and its officials to deprive me an opportunity of providing an explanation and thus amounts to abuse of statutory powers by the Respondent no.1 and its officials. In fact it is pertinent to point out herein that while the Respondent No.1 and its officials, malafidely issued me the Impugned Notice under section 354A of the MMC Act to seek personal vendetta, they, on the contrary on the same day, issued a Notice under section 351 of the MMC Act to an adjacent bungalow no.6 occupied by the famous fashion designer, Manish Malhotra giving him 7 days' time to provide explanation and appropriately respond to the same. This conduct of the Respondent No.1 and its officials clearly demonstrates bias and further displays that the Impugned Notice issued to me is vitiated by malice and was issued as a counterblast to the statements made by me. Hereto annexed and marked as **Exhibit "A"** is the copy of the newspaper article reporting the notice issued to the fashion designer, Manish Malhotra.
- d) With reference to paragraph 3(b) of the Revised Reply, I specifically deny the

same in toto. I say that I have always stated that there was no ongoing work being unlawfully commenced/being unlawfully carried out at the said Bungalow. In any case, in the Amended Writ Petition, I have denied that any illegal work was carried out as alleged.

- e) With reference to paragraph 3(c) of the Revised Reply, I deny that it is my case that any “unlawful work” was done some time ago. The deponent is misrepresenting my contentions. I deny that the Petitioner has even in the amended Petition not disputed having carried out the aforesaid unlawful additions and alterations to the premises, contrary to the sanctioned plan. I crave leave to refer to any rely upon the Amended Writ Petition and exhibits thereto when produced. I specifically deny that in para 7E(g) and in Ground G (ix), the Petitioner has sought to avoid dealing with this issue, by an evasive & misleading response. I repeat and reiterate the contents of in para 7E(g) and in Ground G (ix) of the Amended Writ Petition and deny anything stated that is contrary to what has been stated therein. I crave leave of this Hon’ble Court to refer to and rely upon the documents on record to demonstrate the aforesaid. I deny that the Petitioner has failed to deny having carried out the listed unlawful additions and alterations, for the reasons as alleged or at all.
- f) With reference to paragraph 3(d) and (e) of the Revised Reply, I specifically deny the contents thereof in toto. I deny that I have carried out unlawful additions and alterations as alleged or at all.
- g) With reference to paragraph 4(a) of the Revised Reply, I say that the same is repetitive in nature and has been reproduced by Respondent No.1 from their Affidavit in Reply dated 10th August,2020 and I deny the contents thereof. Despite mentioning the alleged Detection Report twice in their Revised Reply as well as their Affidavit in Reply dated 10th August,2020, the Respondent No.1 has failed to produce the same on both occasions. Hereto annexed and marked as **Exhibit “B”** is the copy of the online Detection Report Register for the period commencing from 04th September, 2020 to 8th September,2020 which is available on the Respondent No.1’s own online portal .
- h) With reference to paragraph 4(b) of the Revised Reply, I deny that pursuant to

such Detection Report, a team of officers comprising of the designated officer, H/West Ward, Assistant Engineer (B&F) H/W, Sub Engineer (B&F) H/W, Sub Engineer (Building Proposal) H/W, Building Mukadam and labour of the Building Dept., visited and inspected the said property on the 7th. I deny that there was any Detection carried out by the Respondent No.1 or its officials on 5th September,2020. I deny that there was any Detection Report. I say that infact the Online Detection Register Report which I have found on the Respondent No.1's own online portal also demonstrates that as per the Respondent No.1 and 2, the detection took place on 7 September, 2020.The detection report also clearly demonstrates the illegality and undue haste in the action taken against the Respondents. I deny that at the time of inspection six workmen, along with materials and tools were also found to be present and work of renovation and finishing was found to be going on in the entire property including the unlawful additions and alterations. I say that the Respondent No.2 for the first time has mentioned that there were allegedly 'six' workmen present at the said Bungalow at the time of the alleged inspection. I say that this has been mentioned by the Respondent no.2 as an afterthought, after reading the contents of my Amended Petition and the questions raised by me therein pertaining to the lack of details of the names of the workmen, number of workmen, material, equipment/tools allegedly said to be found at the said Bungalow. I say that the First Inspection Report and the hand-written Inspection Report annexed by the Respondent no.2 is devoid of any of the above details which the Respondents ought to have mentioned therein at the first instance. In addition to the above, no photographs of those 'six' workmen have been produced by the Respondents at any place whatsoever. I deny that a detailed inspection found that substantial additions and alterations were carried out in the property contrary to the approved plans. I deny that the said officer prepared an inspection report dated 7th September,2020 which recorded details of the unauthorized work of alterations and additions being carried out contrary to the approved plans. I say that the Respondent no.2 has misled this Hon'ble court by stating that the inspection report was uploaded on the RETMS online system by the Filed Officer vide Ref. No. 112126 dated

07.09.2020 at 03:27 pm. It is pertinent to note that on perusal of the First Inspection Report at item no.3, ex facie shows that the time and date of the alleged detection as 7th September,2020 which is contrary to the stand of Respondent No.2. It would not be out of place to state herein that nowhere in the First Inspection Report, the Respondent No.2 has used the word 'uploading' so as to suggest that that the said Report was allegedly uploaded at 15:27:06 on 7th September,2020. I say that the aforesaid statement has now been brought up by the Respondent no.2 in order to wriggle out of the discrepancies/ irregularities/ illegalities pointed out by me in my Amended Petition with respect to the alleged First Inspection Report.

- i) With reference to paragraph 4(c) and (d) of the Revised Reply, I deny that the Reply of the Petitioner did not dispute that the said substantial work of alterations and additions listed in the Notice was being carried out contrary to the Sanctioned plan. I say that my advocate's Reply clearly stated in paragraph no.1 that there was no ongoing work as alleged by the Respondent no.1 and 2 or at all. I say that the Impugned Notice as per the provisions of the MMC Act, is in relation to 'ongoing works', that as no-ongoing work was being carried out, therefore the question of substantial works of alteration or addition in relation to 'ongoing work' does not arise.
- j) With reference to paragraph 4(e) of the Revised Reply, I deny that the reply was uploaded on the RETMS system and forwarded for scrutiny to the concerned designated officer, for want of knowledge. I deny that the Petitioner had not disputed that the work carried on (of substantial alterations and additions) was contrary to the sanctioned plan. I repeat what I have stated earlier herein.
- k) With reference to paragraph 4(f) of the Revised Reply, I repeat and reiterate the sequence of events that have been mentioned by me in the Amended Writ Petition, which had led to the illegal demolition of the said Bungalow.
- l) With reference to paragraph 4(g) of the Revised Reply, I deny that the panchanama was prepared on the site in the presence of the officers of Khar Police station at about 10:55 am on 09.09.2020. I say that no such panchanama is produced by the Respondent no.2 in either the Affidavit in Reply dated 10th

September,2020 nor the Revised Reply. I deny the remaining contents of the paragraph under reply and reiterate what is sated in the Amended Writ Petition and hereinabove.

- m) With reference to paragraph 5 of the Revised Reply, I repeat what is stated earlier and herein. At first instance I repeat and reiterate that there was no ongoing work which was in the nature of substantial work of alteration and addition in the property contrary to the sanctioned plan. I say that the waterproofing work which was carried on at the said Bungalow was to stop/prevent the leakage in the said Bungalow, which was caused due to rains was not in the nature of any substantial work of alteration and addition in the property that required permission.I deny that the unauthorised and unlawful nature of the said alterations and additions (as being contrary to the sanctioned plan) are established on the record. I deny having admitted to doing any illegal work completed prior to 7th September, 2020 which would be in the nature of unauthorised construction as alleged by the Respondent No.2. I say that my case has been misrepresented by the deponent.
- n) With reference to paragraph 6 of the Revised Reply, I deny the contents thereof in toto and repeat what is stated earlier herein.
- o) With reference to paragraph 7(a) of the Revised Reply, I say that although the Petitioner has a place of residence at DB Breeze, 5th floor, Opposite Khar Gymkhana, 16th Road, Khar (West), Mumbai 400022, the Petitioner's said Bungalow also has accommodation facilities, if required. With respect to the reference to the letters annexed at Exhibit A-4 and Exhibit A-5 to the Amended Writ Petition clearly show that the said Bungalow needed structural repairs and was not habitable.
- p) With reference to paragraph 7(b) of the Revised Reply, I repeat what is stated earlier and herein.
- q) With reference to paragraph 7(c) of the Revised Reply, I repeat what is stated earlier and herein. I say that my application dated 3rd October,2018 ("said Application") made to the Respondent no.1 clearly seeks permission for structural repairs and not only for tenantable repairs as stated by the Respondent no.2 in the Revised Reply. In fact in response to the said Application, Respondent

No. 1 responded by issuing two different letters bearing Outward No. W.E.E. HW/527/SR dated 30th October,2018. Vide the first letter, Respondent No.1 permitted me to carry out the structural repairs as recommended by structural consultant to the consultant's fullest satisfaction and submit the structural stability certificate to Respondent No.1 once the work is completed. Vide the second letter, Respondent No.1 informed me that no permission was required for carrying out tenatable repairs under section 342 of the MMC Act and that however, since the structural consultant has recommended structural repairs being C2B category row house, the same shall be undertaken by me under the supervision and guidance of the structural consultant. I say that even the Tara Enterprises letter dated 19th May,2019 (annexed at Exhibit A-7) mentions in the list of work completed that there were structural repairs carried out in the said Bungalow. I say that aforesaid Report was also submitted to the Respondent No.1 in the year 2019 itself. It is also admitted by the Respondent No.1 that they had themselves accorded permission for the structural repairs work which was carried out by me in the said Bungalow.

- r) With reference to paragraph 7(d) of the Revised Reply, I repeat what is stated earlier and herein.
- s) With reference to paragraph 7(e) of the Revised Reply, I deny the contents thereof in toto and repeat what is stated earlier and herein. I repeat and reiterate that the Respondent No.2 for the first time has mentioned that there were allegedly 'six' workmen present at the said Bungalow at the time of the alleged inspection. I say that this has been mentioned by the Respondent no.2 as an afterthought, after reading the contents of my Amended Petition and the questions raised by me therein pertaining to the lack of details of the names of the workmen, number of workmen, material, equipment/tools allegedly said to be found at the said Bungalow. I say that the First Inspection Report and the hand-written Inspection Report annexed by the Respondent no.2 is devoid of any of the above details which the Respondents ought to have mentioned therein at the first instance. In addition to the above, no photographs of those 'six' workmen have been produced by the Respondents at any place whatsoever. On the contrary, the

Respondents in their impugned Notice mention only a purported sketch in Item 7 which is actually a photograph of one person who was trying to control/prevent the leakage which had taken place at the said Bungalow due to rains. It is also pertinent that while, the Respondent No.1 has listed out 14 alleged works ongoing in the said bungalow at Item 7 which were allegedly said to be 'commenced/unlawfully carried on', there is only one photo of 1 person annexed to the Impugned Notice which is just the photo of person trying to prevent leakage from the monsoon rains. No other photographs of any workman, material, equipment/tools allegedly found at the said Bungalow have been produced by the Respondents. I say that the renovation work was completed in January,2020 itself.

- t) With reference to paragraph 7(f) of the Revised Reply, I deny the contents thereof in toto and I repeat what is stated earlier and herein..
- u) With reference to paragraph 7(g) of the Revised Reply, I deny that the contents of paragraph 4A and 5 of the Amended Writ Petition are vague, misleading. I say that that the Respondent No.2 for the first time has falsely mentioned that there were allegedly 'six' workmen present at the said Bungalow or that there were allegedly materials such as plywood present at the time of the alleged inspection. I deny that on the 5th and 7th, officers made any such requests as purported by the Respondent No.2 in the Revised Reply. I say that the Respondent No.1 and its officials entered the said Bungalow by threatening and roughing up the security guard and other staff members present in the said Bungalow. Merely because my staff, Nikhil Surve signed the hand-written inspection report does not prove that the Respondent No.1 and its officials did not enter the said Bungalow by force.
- v) With reference to paragraph 7(h) (i) (j),(k), (l) and (m) of the Revised Reply, I deny the contents thereof and I repeat what is stated earlier.
- w) With reference to paragraph 7(n)of the Revised Reply, I repeat what I have stated earlier and herein. I say that even during the hearing of the matter on 9th September,2020, this Hon'ble Court has noted in its Order the submission of my advocate that '40% of the said premises is already demolished by MCGM', hence

I deny that the allegation of destruction of articles listed is false or has been belatedly made only as a counterblast. I am also annexing herewith the comparative photos of the said Bungalow before and after the illegal demolition carried out by the Respondent No.1 and its officials. Hereto annexed and marked as **Exhibit- "C"** are the comparative photos of the said Bungalow before and after the illegal demolition carried out by the Respondent No.1 and its officials and **Exhibit- "D"** is the cost of the articles that were destroyed by the Respondent No.1 and its officials during the illegal demolition. I say that a complete assessment of the damage caused by the Respondent No.1 and its officials to the said Bungalow due to the illegal demolition is yet to be completed.

- x) With reference to paragraph 7(o), (p), (q) of the Revised Reply, I say that I have already dealt with the same hereinabove. I repeat what I have stated earlier and herein.
- y) With reference to paragraph 7(r) of the Revised Reply, I say that I have already dealt with the same hereinabove. I repeat what is stated earlier and herein. I say that the Respondent no.2 has misled this Hon'ble court by stating that the document at Exhibit B of the Affidavit dated 10.09.2020 is the extract of the online system of the Respondent Corporation and that the time and date of detection as reflected therein is the date and time at which it is uploaded on to the system and not the date and time of the physical detection inspection on the site. It is pertinent to note that on perusal of the First Inspection Report at item no.3, ex facie shows that the time and date of the alleged detection as 7th September, 2020 which is contrary to the stand of Respondent No.2. It would not be out of place to state herein that nowhere in the First Inspection Report, the Respondent No.2 has used the word 'uploading' so as to suggest that that the said Report was allegedly uploaded at 15:27:06 on 7th September, 2020. I say that the aforesaid statement has now been brought up by the Respondent no.2 in order to wriggle out of the discrepancies/ irregularities/ illegalities pointed out by me in my Amended Petition with respect to the alleged First Inspection Report. I say that the Respondent No.2 has conveniently sought to rely on only certain portions of the First Inspection Report without dealing and/or denying the other parts of

the same. The Respondent no.2 has specifically evaded answering/dealing/denying in their Revised reply at paragraph no.3C, the points mentioned by me in my Amended Petition particularly in respect of Item no.15 and 16 mentioned in the First Inspection report.

z) With reference to paragraph 7(s) to (y)of the Revised Reply, I say that I have already dealt with the same hereinabove. I repeat what I have stated earlier and herein.

aa) With reference to paragraph 8 to 22 of the Revised Reply, I say that the contents of the aforesaid are repetitive in nature and have already been dealt with by me hereinabove. I repeat what has been stated by me earlier and herein.

bb) With reference to paragraph 23 and 24 of the Revised Reply, I deny the same in toto. I have already dealt with the same, hereinabove. I repeat what has been stated by me earlier and herein.

(9) In the light of the aforesaid facts and circumstances, I say that the captioned Writ Petition ought to be allowed by this Hon'ble Court.

Solemnly affirmed at Manali)

dated this 20th day of September 2020)

Identified by me:

For Siddiquee and Associates

Advocate for the Petitioner

Kangana Kanau
(Petitioner)