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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 32397 OF 2025

Indu Oil And Soap Co.
Through authorised representative
Mr. Rajesh Girdharilal Modi
having office at 5-A,
Hansraj Lane, Byculla (E),
Mumbai 400 027. ... Petitioner

V/s.

1. The Municipal Corporation Of
Greater Mumbai through
its Municipal Commissioner,
Mahapalika Marg, Mumbai 400001.
2. Assistant Commissioner
E Ward, Byculla (E),
Mumbai 400 008.
3. Executive Engineer (Designated Officer)
E Ward, Byculla (E),
Mumbai 400 008.
4. Assistant Engineer,
Building and Factory Department,
E Ward, Byculla (E),
Mumbai 400 008. ... Respondents

Mr. Kunal Bhanage a/w. Mr. Akshay Pawar, Mr. Darpan Gupta i/b. Mr. Shashank Shubham, Advocate for Petitioner.

Ms. K.H. Mastakar, i/b. Ms. Komal Punjabi, Advocate for Respondent-BMC.

Mr. Shahaji Pandhar, Sub-Engineer (B and F) Dept. E-Ward, BMC Officer present.

**CORAM : RAVINDRA V. GHUGE AND
ASHWIN D. BHOBE, JJ.**

RESERVED ON : 09th OCTOBER, 2025

PRONOUNCED ON : 13th OCTOBER, 2025

JUDGMENT : (PER ASHWIN D. BHOBE, J)

1. Heard Mr. Bhanage, learned Advocate for the Petitioner and Ms. K.H. Mastakar, learned Advocate for Respondents.

2.. In view of the urgency shown in this matter, circulation was granted to the Petitioner and the petition was taken up for hearing on 09.10.2025.

3. Rule. Rule made returnable forthwith and heard finally by consent of the parties.

4. Petitioner is aggrieved by the Notice bearing No. E/D01E / 210 / 354A-MMC ACT / E85N01 / 16-08-2025 dated 21/08/2025 issued by the Respondent No. 3 under section 354A of the Mumbai Municipal Corporation Act, 1888 ("said Act" for short), by which the Petitioner is directed to stop erection of the building / work; to produce permission approved by the competent authority for erection of the building /

erection of the work, within 24 hours, failing which the same would be removed from the site (“impugned Notice” for short).

5. **Pleadings in the matter :**

(a) Petitioner is the owner in possession of property situated at 5-A, Hansraj Lane, Byculla (E), Mumbai. Petitioner undertakes business of manufacturing and distributing Oil and Soap from the structure (factory) existing in the said property.

(b) Said structure being old required repairs to avoid water leakage during monsoon and to sustain weather.

(c) Petitioner vide letter dated 21.07.2025 addressed to the Respondent No. 4 requested for the permission to carry out tenantable repairs by replacing old rusted Tin sheets (GI sheets) on the roof and along the sides of the said structure to stop the leakages.

(d) Despite the said intimation and request for permission if any, the Respondents failed to respond to the letter dated 21.7.2025. In view of the heavy monsoon and leakage from the roof, the Petitioner was constrained to replace the old rusted Tin sheets (GI sheet) on the roofs as well as on the side of the

structure.

(e) Respondent No. 3 carried out inspection of the said premises.

(f) On 21.08.2025, Respondent No. 3, issued the impugned Notice .

(g) By reply dated 25.08.2025 the Petitioner informed the Respondent No. 2 that the Petitioner had neither erected any building nor carried out any work which would attract action as referred in the impugned Notice. Petitioner specifically stated that the Petitioner had replaced the roof of the existing structure without any structural change to the building.

(h) On 07.10.2025 at about 11.30 a.m. the Respondent No. 2 visited the said property and orally directed the Respondent No. 3 to start the demolition process in terms of the impugned Notice . Petitioner is therefore before this Court seeking the following substantial reliefs:

“A. Quash and set aside the Notice u/s. 354 A of the Mumbai Municipal Corporation Act, 1888 dated 21.08.2025 bearing no. E/DO1E/210/354A - MMC ACT/E85N01/16-08-2025 with reference no. 200352 issued by the Respondent No. 3 (Exhibit C) being arbitrary, illegal and violative of the Petitioner's constitutional and statutory right.

B. While quashing and setting aside the Notice u/s. 354 A of the Mumbai Municipal Corporation Act, 1888 dated 21.08.2025 bearing no. E/DO1E/210/354A – MMC ACT/E85N01/16-08-2025 with reference no. 200352 issued by the Respondent No. 3, This Hon'ble Court may be pleased to declare that the partial demolition action undertaken by the Respondents is illegal, arbitrary and in violation of the provisions of law;

C. May be pleased to restrain the Respondents to carry out any further demolition in respect of the Notice u/s. 354 A of the Mumbai Municipal Corporation Act, 1888 dated 21.08.2025 bearing no. E/DO1E/210/354A – MMC ACT/E85N01/16-08-2025 with reference no. 200352 issued by the Respondent No. 3;”

6. Mr. Kunal Bhanage, learned Advocate for the Petitioner submits that the Petitioner has neither carried out any construction of building nor has not done any work which would amount to construction requiring permission from the Respondents. He submits that the structure of the Petitioner in the said property is a legal structure, erected pursuant to approved plans and the same is in existence since the year 1970. He submits that the roof of the structure being old and dilapidated, the Petitioner vide their letter dated 21.07.2025 brought to the notice of the Respondent No. 4, the need for replacing old Tin Sheets on the roof of the said premises so as to prevent leakage in the premises. He submits that the nature of the work undertaken by the Petitioner was tenantable repair work, by replacing the old rusted Tin sheets by new GI sheets on

the roof and along the sides. He submits that the Petitioner has neither changed the dimensions of the structure nor altered the structure in any manner.

7. He submits that the action initiated by the Respondent No. 2 is malafide, mischievous and illegal. He submits that the impugned Notice does not support the contention of the Respondents, of the Petitioner having carried out any illegal construction. He submits that pursuant to the receipt of the impugned Notice, the Petitioner had filed its reply placing before the Respondent No. 2 the nature of the tenantable repairs. He submits that the Respondents have not passed any speaking order under section 354A of the said Act. He submits that the Respondent Nos. 2 and 3, on 07.10.2025, in a high handed manner and without any prior notice, came to the said property and started pulling down/removing /puncturing the said repaired roof of the structure. He, therefore, prays that the petition be allowed.

8. Ms. K.H. Mastakar, the learned Advocate for the Respondents submits that the Petitioner had indulged in carrying out illegal construction work without any permission, warranting action under the said Act. She refers to the schedule in the impugned Notice to

indicate the nature of the illegal construction undertaken by the Petitioner. She submits that the Respondents have acted against illegal construction / construction activity undertaken by the Petitioner and therefore, no fault can be found in the act of the Respondents.

9. Heard the learned Advocates and perused the records. From the rival contentions of the parties, the point for determination in the present petition is whether the Petitioner had carried out any illegal construction warranting action by the Respondents under Section 354-A of the said Act ? Whether the impugned Notice is illegal?

10. Before dealing with the submissions and contentions of the respective parties, it is apposite to refer the provisions of section 354-A of the said Act, which reads as follows :

“[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 subsection (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.]”

(emphasis supplied)

11. Case of the Petitioner is of carrying out tenantable repairs to the existing structure. Nature of the tenantable repair work and the reason for such repairs is mentioned by the Petitioner in its letter dated 21.07.2025, which reads as follows:

“With reference to the above subject I the undersigned do hereby inform your goodselves that due to heavy monsoons there is lots of leakages at our premises. These leakages are continuous problem for us since a few years

Presently; we wish to start tenantable repair work, eg. replacing old patras in our roof and along the sides to stop the leakages in our premises.”

(emphasis supplied)

12. Petitioner in paragraph 4-E has made the following statement:-

“E. The Petitioner states that, after issuing the said letter, the Respondents failed to provide any reply and therefore, as the situation worsened, the Petitioner was constrained to replace the GI Sheet on the roof as well as on the sides. At this juncture, it is pertinent to inform that the replacement of the roof with the same material without changing horizontal and vertical existing dimensions of the structure and without replacing and removing any structural members of load bearing walls.”

(emphasis supplied)

13. The Schedule (description work) mentioned in the impugned Notice makes a reference to the nature of work undertaken by the Petitioner. Sketch appended to the impugned Notice specifically identifies the work being of replacing of the GI sheet on the roof of the said structure. Said Schedule is extracted herein below :

“Schedule (Description of work):

To stop the ongoing structural work and replacement of corroded /rusted /old roofing GI sheets with Change in structural members without any valid permission of existing structure at Indu Oil Soap Company,5/A, Hansraj Lane, Behind of Byculla Police Station, Byculla East,Mumbai – 400027.”

14. Thus, the question is whether the work of replacing the old rusted Tin sheets with new GI sheets would amount to addition to a building, or change of existing user or to make any alteration or repairs

to a building involving the removal, alteration or re-erection of any part of the building, which would require permission in terms of section 342 of the said Act.

15. From the records produced before us and as submitted by Mr. Kunal Bhanage, the work undertaken by the Petitioner is of replacement of the old rusted Tin sheets on the roof of the said structure with new GI sheets without changing horizontal and vertical existing dimensions of the structure and without replacing and removing any structural members of load bearing walls. The said repair work undertaken by the Petitioner, apparently would fall within the meaning of “tenantable repairs” used in section 342 of the said Act. Tenantable repairs are defined in the explanation in Section 342 of the said Act. Section 342 of the said Act reads as follows :

*“342. Notice to be given to the Commissioner of intention to make additions, etc., [to or change of user of, a building]
Every person who shall intend—*

(a) to make any addition to a building, [or change of existing user] or

[(b) to make any alteration or repairs to a building involving the removal, alteration or re-erection of any part of the building except tenantable repairs:

Provided that no lowering of plinth, foundation or floor in a building shall be permitted.

Explanation.— "Tenantable repairs" in this section shall mean, only,—

- (i) providing guniting to the structural members or walls;*
- (ii) plastering, painting, pointing;*
- (iii) changing floor tiles;*
- (iv) repairing W. C., bath or washing places;*
- (v) repairing or replacing drainage pipes, taps, manholes and other fittings;*
- (vi) repairing or replacing sanitary water plumbing, or electrical fittings; and*
- (vii) replacement of roof with the same material, but shall not include,—*

(a) change in horizontal and vertical existing dimensions of the structure;

(b) replacement or removal of any structural members of load bearing walls;

(c) lowering of plinth, foundations or floors;

(d) addition or extension of mezzanine floor or loft; and

(e) flattening of roof or repairing roof with different material];

(c) [* *]*

[(cc) to make any alteration in a building involving-

- (i) the sub-division of any room in such building so as to convert the same into two or more separate rooms,*
- ii) the conversion of any passage or space in such building into a room or rooms, or]*

(d) to remove or reconstruct any portion of a building abutting on a street which stands within the regular line of such street,

shall give to the Commissioner, in a form obtained for this purpose under section 344, notice of his said intention, specifying the position of the building in which such work is to be executed, [* *] the nature and extent of the intended work, [the particular part or parts, if*

any, of such work which is or are intended to be used for human habitation] [and the name of the person whom he intends to employ to supervise its execution.]”

(emphasis supplied).

16. Petitioner vide its letter dated 21.07.2025 and its reply dated 25.08.2025 addressed to the Respondents, brought to the notice of the Respondents that the work undertaken by the Petitioner was tenantable repairs. To a query to Ms. K. H. Mastakar learned Advocate for the Respondents, as to whether Respondents have passed a speaking order dealing with the reply of the Petitioner, she answered in the negative and maintained that the Respondents have acted on the directions contained in the impugned Notice. Ms. K. H. Mastakar, learned Advocate for Respondents was unable to point any material to indicate Petitioner having undertaken any work beyond the “tenantable repairs” as claimed by the Petitioner.

17. We are therefore, in agreement with Mr. Bhanage that the work undertaken by the Petitioner would fall within the meaning of the tenantable repairs as referred under section 342 of the said Act . Section 342 of the said Act does not require permission for tenantable repairs.

18. Impugned notice issued by Respondent No. 3 discloses total

non-application of mind. Respondent No. 3 has acted with material irregularity and has failed to consider the basic requirements for invoking provisions of section 354A of the said Act. Facts required to invoke the provisions of Section 354A of the said Act were lacking in the present case. Coupled with the above said facts the Respondents have acted illegally and in a highhanded manner, by demolishing / removing/ puncturing the roof of the structure on the basis of the impugned Notice. Considering the facts and circumstances of the present case, we deem it fit and proper to entertain the present Petition in our extraordinary jurisdiction to quash and set aside the impugned Notice.

19. For the reasons recorded herein above, **the Petition is allowed** in terms of prayer clause (A), (B) and (C). The impugned Notice dated 21.08.2025 issued by the Respondent No. 3 is held to be illegal, consequently quashed and set aside. Respondent Nos. 2 and 3 are directed to pay cost of Rs. 25,000/- to the Petitioner within 30 days from today and file compliance report before this Court.

20. Rule made absolute in the above-said terms.

21. At this juncture, Mr. Kunal Bhanage, learned Advocate for

the Petitioner submits on instructions that after amount if deposited in this Court, the same may be transferred to the following :

Account Name	: Shanti Avedna Sadan.
Bank Account No.	: 50100558420612.
IFSC Code	: HDFC0000442.
Account Type	: Saving
Bank Name	: HDFC Bank.
Branch Name	: Bandra West, Hill Road.
Branch Address	: Bandra Ocean View CHS, Next to Mehboob Studio, Hill Road, Bandra West, Mumbai - 400 050.

22. Upon deposit the Registry is directed to transfer the amount of Rs. 25,000/- to the above said account holder.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)