

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) No.1816 OF 2011.

Bombay Nursing Home Association & ors. ... Petitioners.

V/s.

M.C.G.M.& Ors.

...Respondents.



I, Rajeev  
I, Rajeev H. Kuknur, adult Indian Inhabitant, working as Ch.

Engineer (D.P.), in the employment of the Municipal Corporation of Greater Mumbai, the Respondent No.1 herein having my office at 4<sup>th</sup> Floor, Municipal Head Office annexed building, Mahapalika Marg, Mumbai 400 001, do hereby solemnly state as under :-

1. I say that I have read the copy of the Writ Petition alongwith annexure thereto. I have perused the records available pertaining to this case and I am also conversant with the facts and circumstances of the case. I am filing this affidavit on behalf of Respondents No.1 to 4

2. I am filing this affidavit on the basis of office files and I am able to depose before this court. I am filing this affidavit for the limited purpose of opposing the admission of the Writ Petition and for grant of any interim or ad interim reliefs in favour of the petitioner. I say and submit that allegations and contentions not specifically dealt with by these respondents should not be deemed to have been admitted unless the same is specifically denied by these respondents.

3. I say that the W.P. filed by the petitioner is not maintainable and submit that this Hon'ble Court has no jurisdiction to try and entertain this petition under Article 226 of the Constitution of India. I say that this petition involves disputed questions of facts and as such this Hon'ble Court cannot entertain this issue sitting in its writ jurisdiction. I, therefore, submit that the petition is liable to be dismissed with cost.

4. Without prejudice to the aforesaid contentions the true facts pertaining to the present case are as under:

a) I say that the petitioner's herein had filed W.P. being

W.P.No.793 of 2011 and W.P.No.795 of 2011 in this Hon'ble Court on 14.6.2011. This Hon'ble Court disposed off both the Writ Petitions and directed that :-

i) The petitioners to make representation to the Municipal Corporation within a period of 2 weeks from the date of the order in relation to the subject matter of demand notices /circular which are referred to in the prayer clause (a) of the petition and the circular dt. 7.5.2011 issued by the Corporation.

ii) The Municipal Commissioner or the officer nominated by him shall hear the petitioner and make a speaking order in relation to demand notices /circulars which are referred to in prayer clause (a) of the petition and the circular dt. 7.5.2011 issued by the Corporation.

(b) Pursuant to the said order a representation dt. 24.6.2011 is made in a representative capacity on behalf of applicants enlisted in the list at Exhibit 'A' therewith i.e. Bombay Nursing Home Association and 80 Ors. Though the Petitioners in the Writ Petition No.793 of 2011 were Bombay Nursing Home Assoc. & 50 Others.

(c) A hearing was given by Municipal Commissioner on 25.7.2011 when the representative of the Bombay Nursing Home Association and Ors. were present.

Shri.Amit Hariani Counsel for the Bombay Nursing Home Association appeared and argued in detail on following issues of  
(A) Renewal of Registration under Bombay Nursing Home Registration Act, 1949.

(B) Change of user under Development Control Regulation.

(C) The charges levied and procedure prescribed by the Corporation vide circular dt. 4.2.2011 are without authority of law.

Shri Balsara Advocate for Petitioner in W.P. No.795 of 2011 filed by Dr.Mrs.Michelle Fonseca and ors. argued on their behalf. He adopted all the arguments of Shri Amit Hairiani Counsel for Bombay Nursing Home Association. He further submitted that their Nursing Home existed since 1967 however, the date of registration is of 20.6.1974 i.e. prior to DCR 1991. Their Nursing Home is on the ground floor and has a separate entrance and that his case is covered under Regulation 3(5) of DCR 1991.

(d) The Municipal Commissioner after considering all the arguments of the petitioner's counsel & the Rules, Regulations & Policies in force has passed a reasoned order dtd.3.8.2011 and directed that :





(A)(i) As per the order dated 24.6.2011 passed by the Hon'ble High Court applications for renewal of the Nursing Home / Maternity Homes and Clinics registration under the Bombay Nursing Home Registration Act, 1949 shall be considered independently of the Demand Notice already issued, but shall be subject to the owners of the Nursing Home / Maternity Homes and Clinics paying as per the new demand notice within 15 days from the receipt of the approval for change of user / activity of their premises failing which, the registration granted shall be revoked.

(ii) Nursing Home which operate in that part of the building where building approval was taken, showing use for such activity, will not need the change of user now. They shall be renewed forthwith without any consideration.

(B) All the Petitioners who are not in lawful use of Nursing Home, Maternity Home, Clinics are liable to apply for change of user / activity by following due procedure. If their proposals are approved then a fresh Demand Notice will be issued calling upon the Applicant to pay within 15 days the amount mentioned therein failing which the registration issued under Bombay Nursing Home Registration Act, 1949 will be revoked.

If their proposal for change of user / activity is rejected then the said registration issued under Bombay Nursing Home Registration Act, 1949 will be revoked.

(C) The procedure prescribed by the Corporation vide circular dt. 4.2.2011 will be followed and the fees/charges/penalty will be levied accordingly.

5. As per the order of the Hon'ble High Court dated 14.6.2011 this order will remain in abeyance for a period of four weeks from 03/08/2011.

I say that petitioners have filed the present petition wherein prayer clause b is as follows:

(b) that this Hon'ble Court be pleased to call for the papers and proceedings with respect to the impugned demand notices issued by Respondent No.4(as mentioned in Exhibit J hereto) and after examining the legality, validity and propriety thereof, this Hon'ble Court be pleased to quash and set aside the same.

I say that as mentioned herein above the Municipal Commissioner has already passed an order that application for renewal of Nursing Home /Maternity Home and Clinics registration

under Bombay Nursing Home Registration Act 1949 shall be considered independently of the demand notice already issued. Further all the petitioners who are not in lawful use of Nursing Home, Maternity Home, Clinics are liable to apply for change of user/activity by following due procedure. If their proposals are approved then a fresh Demand Notice will be issued calling upon the applicant to pay within 15 days the amount mentioned therein failing which registration issued under Bombay Nursing Home Registration Act 1949 will be revoked.



6. I say that 40 no. of proposals were approved before 31.7.2011 and 14 proposals were approved after 31.7.2011. I say that before 31.7.2011, 775 demand notices were issued by M.C.G.M. However, after the order passed by the Municipal Commissioner on 3.8.2011 these Respondents have yet not issued any fresh demand notice.

I say that the Municipal Commissioner has passed a speaking order on 3.8.2011 after taking into consideration all the arguments submissions made by the Counsel for the petitioner in Writ Petition No. 993 of 2010 and 795 of 2011, all the rules, regulations and policies in force.

8. In view of the aforesaid facts and circumstances a petition is liable to be dismissed with cost.

Solemnly affirmed at Bombay )  
 this 15<sup>th</sup> day of October 2011 )

*[Handwritten signature]*

Identified by me.  
*[Handwritten signature: K. Chandrasekhar]*  
 Advocate for Respondent Corporation

Before me.

**BEFORE ME**

*[Handwritten signature]*

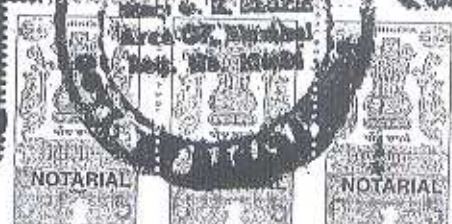
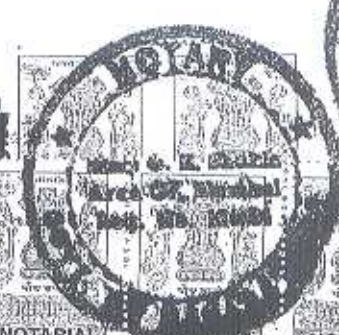
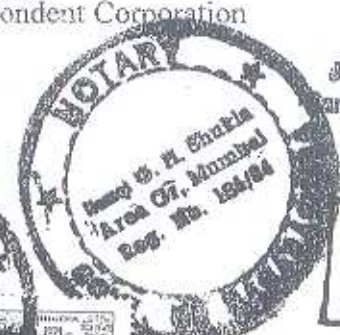
**G. H. SHUKLA,**  
 NOTARY CHIEF MUMBAI  
 Jagdamba Bhavan, Ground Floor,  
 Mangatras Kadam Marg, Lower Park,  
 MUMBAI - 400 013,

**15 OCT 2011**

**NOTED & REGISTERED**

Sr. No. 7408/42-2011

Dated 15.OCT.2011



IN THE HIGH COURT OF JUDICATURE AT  
BOMBAY

ORDINARY ORIGINAL CIVIL  
JURISDICTION

WRIT PETITION (L) No.1816 OF 2011.

Bombay Nursing Home Association  
& ors. ..Petitioners.

V/s.  
M.C.G.M.& Ors. ...Respondents.

Affidavit of Shri

*Rajeev H. Kulkarni*  
*Adv. & C.D.P.*

Dated this *15<sup>th</sup>* day of *October*, 2011.

Shri. R. A. Malandkar.  
Advocate and Law Officer,  
Legal Department,  
2<sup>nd</sup> Floor, Municipal Head Office,  
Fort, Mumbai 400 001.