

ANNEXURE 26
COLONEL (Retired) ABHIJIT G. KADAM

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444/ A/ 201

5th July, 2013

The Chief Officer

Kulgaon - Badlapur Municipal Council
Badlapur

Subject :- Prayer for Revocation of Stop Work Notice with respect to Construction Work undertaken by Shrutika Constructions on Land identified with Survey No. 7, Hissa No. 1 in Village Kharvai, Taluka - Ulhasnagar.

References :-

- (A) Complaint of Shri Prabhakar Waman Oak dated 20th February, 2013 (Refer to Annexure 1).
- (B) Complaint letter of Shri Shrinivas Waman Oak, Shri Prabhakar Waman Oak and Shri Azam Yusuf Kohari dated 21st May, 2013 (Refer to Annexure 2).
- (C) Your Notice dated 4th June, 2013 (Refer to Annexure 3).

31.6.13
आवक - आवक लिपिक
कलकत्ता - बडलापुर नगरपालिका
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दि. 06/07/2013

- (D) Reply of Shrutika Constructions dated 12th June, 2013
(Refer to Annexure 4).
- (E) Reply of Advocate of Smt. Charutai H. Dhumal undated
received by your offices on 12th June, 2013 (Refer to
Annexure 5).
- (F) Your Stop Work Order dated 26th June, 2013 (Refer to
Annexure 6).

Dear Sir,

Under the instructions of and on behalf of my client Shri Sandesh Sable, Proprietor of Shrutika Constructions, who is addressee No. 2 in the aforementioned "Stop Work" Order dated 26th June, 2013, I write to your good offices in concern with the said "Stop Work" Order for seeking its immediate revocation as under:-

1. At the outset my client submits to reiterate and stand by whatever is stated by him in his earlier explanatory letter in response to the Show Cause Notice dated 4th June, 2013. My client further submits to the point of reiteration of what he has earlier stated in the said explanatory letter dated 12th June, 2013 that neither he nor any employee of his proprietary firm i.e. Shrutika Constructions have

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committed any wrong or any illegal act during the development work being carried out on the land identified as Survey No. 7, Hissa No. 1 situated at Village Kharvai, Taluka - Ulhasnagar. My client also submits that the entire body of development work on the aforesaid parcel of land is being carried out within the strict parameters as laid down under the various provisions of the Maharashtra Regional Town Planning Act, 1966 (to be hereinafter referred to as "MRTP Act" for the sake of brevity), The Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965 (to be hereinafter referred to as "MMC, NP & IT Act" for the sake of brevity) and the Rules and Bye - Laws framed there-under, and also in consonance with the other relevant provisions of laws in force.

2. My client further submits that his proprietor firm i.e. M/s Shrutika Constructions vide an application No. 21203090023 dated 9th March, 2012 sought Permission for Construction on a parcel of land admeasuring 42R i.e. 4250 Square Meters out of the larger plot of land designated as Survey No. 7, Hissa No. 1 situated at Village Kharvai, City - Badlapur. My client then states that subsequent to the submission of the aforesaid application dated 9th March, 2012, he was issued with Permission of Construction No. BPA/ 00159/ 2012 dated 22nd March, 2012 on the aforesaid parcel of land admeasuring

4250 Square Metres. My client then submits that he has carried on with the construction activity on the aforesaid parcel of land strictly within the scope and parameters as laid down in the aforesaid Permission for Construction of Kulgaon - Badlapur Nagar Parishad. Annexed herewith and marked as Annexure 7 is a xerox copy of the aforesaid Permission for Construction dated 22nd March, 2012, and my client craves leave to refer to and rely upon the said document, when produced. My client submits that a perusal of the said Permission for Construction shall reveal that the said Permission pertains to a plot of land admeasuring 4250.00 Square Metres, which is part of Survey No. 7, Hissa No. 1 in Village Kharvai, City - Badlapur. My client further submits that in the said Permission for Construction, the planned area for development is shown as 3871.91 Square Meters, with the sanctioned development for a structure consisting of four wings i.e. "A", "B" and "C" Wings of Ground plus Seven Floors, and "D" Wing of Ground plus Three Floors. My client also submits that subsequent to the issuance of the aforesaid Permission for Construction, he had obtained the Building Plan with respect to the aforesaid approved structure comprising of four wings that was also approved by Kulgaon - Badlapur Municipal Council. My client submits that the said Building Plan shows the size of the plot underneath and around the said approved structure as admeasuring 4250 Square Meters in which a the layout of a total of 110 tenements

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situated in four wings have been approved for construction. Annexed herewith and marked as **Annexure 8** and **9** are xerox copies of the aforesaid Approved Building Plans dated 22nd March, 2012, and my client craves leave to refer to and rely upon the said documents, when produced. My client submits to the point of reiteration to what is already submitted by him hereinabove that his proprietorship firm i.e. **M/s Shrutika Constructions** have restricted the construction of the aforementioned approved structure to strictly adhere to the laid down parameters incorporated in the aforesaid Permission for Construction and the aforesaid approved building plans, and that neither my client nor his proprietorship firm has transgressed the said permissions in any manner whatsoever.

3. My client submits that he has already completed construction of a substantial portion of the said structure which would ultimately comprise of 110 tenements. Annexed herewith and marked as **Annexure 10** are the photographs showing the status of construction of the said structure as on 17th June, 2013, and my client craves leave to refer to and rely upon the said Photographs, when produced. My client also submits that the perusal of the said photographs shall reveal that construction of the said structure has commenced considerably before the institution of the first complaint by the

Complainant on 20th February, 2013, and that by the date of the said complaint, the said structure had already been completed beyond the plinth plus four levels. My client further submits that the perusal of the photographs shall also reveal that the nature of construction is strictly within the scope of the permissions granted by Kulgaon - Badlapur Municipal Council, and that the said construction does not violate the provisions under Section 51 of MRTP Act and thus the said construction is not susceptible to the issuance of any Notice under Section 189 of MMC, NP & IT Act. My client further submits that the said issuance of Show Cause Notice dated 4th June, 2013 under Section 189 of MMC, NP & IT Act is therefore in consequence ~~not~~ in law, and that the subsequent "Stop Work" Order dated 26th June, 2013 issued under the same provision is infructuous and required to be revoked with immediate effect.

4. My client also submits that with the substantial ~~level~~ of construction having been completed, and the work at the upper ~~levels~~ of the said structure being executed with right earnest, the corresponding power consumption at the said construction ~~is also~~ also increased to a substantial degree. Annexed herewith and ~~marked~~ as Annexure 11 is a xerox copy of the Power Consumption Bill ~~issued~~ by Maharashtra State Electricity Distribution Co. Ltd. for ~~the said~~ structure for the month of April - May, 2013 that amounts to a ~~sum~~ of

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Rs. 28, 379.63, and my client craves leave to refer to and rely upon the said document, when produced. My client submits that the said sum of the aforesaid bill of the Maharashtra State Electricity Distribution Co. Ltd. indicates that the construction activity on the said parcel of land is in full swing and progressed to a substantial degree.

5. My client submits that any Notice and consequent Order under Section 189 of MMC, NP & IT Act can only emanate from the assessment of any unauthorized construction by the officials of Kulgaon - Badlapur Nagar Parishad, which transgresses the parameters laid down in the aforementioned Construction Permissions and Approved Building Plans. In the present case however, my client submits that no such unauthorized construction has been carried out, and neither such unauthorized construction is recorded to have been observed by the officers of Kulgaon - Badlapur Municipal Council in the aforementioned Show Cause Notice dated 4th June, 2013. My client submits that in subsequence to the said Show Cause Notice dated 4th June, 2013 and the Reply of my client thereto dated 12th June, 2013, no officer of the Kulgaon - Badlapur Municipal Council has carried out inspection of the said approved structure nor has any report regarding any unauthorized construction been filed

8. My client submits that the said parcel of land admeasuring 4250 Square Meters on which the necessary aforementioned permissions have been obtained by my client for construction of the said structure comprising of four wings is a part of a larger plot of land admeasuring 1 Hectare - 94 R - 4P designated as Survey No. 7, Hissa No. 1 of Village Kharvai, Taluka Ambarnath which earlier belonged to the Complainants in its entirety. Out of this larger plot of land, a parcel of land admeasuring 60R was sold by the said Complainants to Smt. C.H. Dhumal on 7th December, 2009 by a Registered Sale Deed. Annexed herewith and marked as **Annexure 13** is a xerox copy of the aforesaid Registered Sale Deed dated 7th December, 2009, and my client craves leave to refer to and rely upon the said document, when produced. Consequent to the above, mutation entries with respect to the aforesaid piece of land were accordingly changed after the necessary submissions before the concerned Revenue Authorities. Annexed herewith and marked as **Annexure 14** are xerox copies of the Record of Rights No 821 dated 12th June, 2013 with the respect to the said plot of land, and my client craves leave to refer to and rely upon the said document, when produced. The said Record of Rights show the names of the Complainants as well as Smt. C. H. Dhumal as the owners of the said plot of land, with Smt. C. H. Dhumal being show as exclusive owner of

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the portion admeasuring 60R. Subsequent to the above development of alienation of the said parcel of land admeasuring 60R to Smt. C. H. Dhumal, my client states that he entered into a Development Agreement with the said Smt. C. H. Dhumal for a consideration of Rs. 2, 89, 28,000/- for a parcel of land admeasuring 40R out of the 60R parcel of land purchased by Smt. C. H. Dhumal. Annexed herewith and marked as **Annexure 15** is a xerox copy of the aforesaid Development Agreement dated 12th December, 2011 between my client and Smt. C. H. Dhumal, and my client craves leave to refer to and rely upon the said document, when produced. In consonance with the aforesaid Development Agreement No. 12674/ 2011 dated 12th December, 2011, my client was also granted a Power of Attorney by the said Smt. C. H. Dhumal with respect to the development of the said parcel of land admeasuring 40R. Annexed herewith and marked as **Annexure 16** is a xerox copy of the aforesaid Power of Attorney dated 12th December, 2011, and my client craves leave to refer to and rely upon the said document, when produced. Subsequent to the execution of the said Development Agreement and the granting of Power of Attorney both dated 12th December, 2011, my client states that he executed a registered Rectification Deed dated 22nd February, 2012, whereby the said Smt. C. H. Dhumal and my client rectified the area of the parcel of land sought to be developed vide the

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aforementioned Development Agreement dated 12th December, 2011 from 40R to 42R. Annexed herewith and marked as **Annexure 17** is a xerox copy of the aforesaid Rectification Deed No. 1925 of 2012 dated 22nd February, 2012, and my client craves leave to refer to and rely upon the said document, when produced.

9. On the basis of the above documents, my client submits that he had secured full development rights over a parcel of land admeasuring 42R of the larger plot of land admeasuring 1H - 94R - 4P identified as Survey No. 7, Hissa No. 1 of Village Kharvai, Taluka - Ulhasnagar from the said Smt. C. H. Dhumal. My client further states that the said area of 42R converts to an area of 4250 Square Metres, which exactly confirms with the measurements expressed in the aforementioned development/ construction permissions obtained from Kulgaon - Badlapur Municipal Council for the development of the said parcel of land.

10. My client submits that he applied for and also obtained a Search Report from the Offices of Sub - Registrar of Assurances, Ulhasnagar, in concern with the said plot of land and the parcels thereof on the completion of the aforesaid transactions. Annexed herewith and marked as **Annexure 18** is a xerox copy of the aforesaid Search Report dated 9th January, 2013, and my client craves leave to

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refer to and rely upon the said document, when produced. My client submits that the perusal of the said Search Report dated 9th January, 2013 shows that all the above mentioned transactions are on record of the registry of the aforesaid Sub Registrar of Assurances, Ulhasnagar. My client further submits that he concurrently obtained a Title Certificate with respect to the said plot of land from an Advocate. Annexed herewith and marked as Annexure 19 is a xerox copy of the aforesaid Title Certificate dated 18th January, 2013 certified by Ms. Kiran B. Banote, Advocate High Court, and my client craves leave to refer to and rely upon the said document, when produced.

11. My client thus submits that he has sought and obtained Permissions for Construction and Approved Building Plans with respect to the development on the aforementioned parcel of land admeasuring 42R i.e. 4250 Square Meters itself. My client further submits that his development rights over the said parcel of land admeasuring 42R i.e. 4250 Square Meters are not been challenged or disputed by the said Complainants in any manner whatsoever, and in fact the knowledge of the aforementioned Development Agreement is being admitted by the said Complainants. My client submits to the point of reiteration to what is already been submitted by him hereinabove that he has limited himself to this very parcel of land

admeasuring 4250 Square Metres, whilst constructing the said permitted structure, and that he has not traversed the bounds of the said parcel of land admeasuring 42R i.e. 4250 Square Meters at any stage in the development up to the present date. My client further submits that he has no intention to transgress the aforesaid bounds at any time or circumstances in the future.

12. On the subject of demarcation of the said parcel of land admeasuring 42R i.e. 4250 Square Metres from the larger plot of land admeasuring 1H - 94R - 4P, my client states that along with the application for obtainment of Permission for Construction dated 12th March 2012, he had also submitted the detailed Survey Plan of the said parcel of land sought to be developed by him. My client submits that he applied to the Department of Survey, Ambernath for the carrying out of survey with respect to the said parcel of land. My client submits that the Department of Survey, Ambernath carried out a detailed survey with respect to the said parcel of land admeasuring 60R belonging to Smt. C. H. Dhumal on 13th January, 2012 in which the extent and layout of the aforesaid parcel of land is clearly marked and distinguished. Annexed herewith and marked as Annexure 20 is a xerox copy of the aforesaid Survey Report and T.I.L.R. Map dated 13th February, 2012, and my client craves leave to refer to and rely upon the said document, when produced. My client

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also states that prior to the aforementioned exercise of conduct of Survey over the said parcel of land, the offices of the Survey Department had sent the necessary statutory Notices dated 1st January, 2012 to owners/ occupiers of all the plots of land situated adjacent to the said parcel of land admeasuring 60R. Annexed herewith and marked as Annexure 21 is a xerox copy of the aforesaid Notice dated 1st January, 2012 served by the Department of Survey, Ambemath, and my client craves leave to refer to and rely upon the said document, when produced. My client submits that the perusal of the said Notice dated 1st January, 2012 reveals that the said Notice was also served on Shri Shrinivas Waman Oak, Complainant intimating him of the impending Survey scheduled on 13th January, 2012. That on account of the service of such Notice, my client submits that it is deemed that the Complainants were in knowledge of the said Survey conducted by the Department of Survey on 13th February, 2012. My client further states that a perusal of the said Survey Report dated 13th February, 2012 clearly indicates the layout and extent of the said parcel of land admeasuring 60R, of which 42R is sought to be developed in pursuance of the aforesaid Development Agreement dated 12th December, 2011 and the Permission for Construction dated 12th March, 2012. My client further submits to the point of reiteration to what is already submitted by him.

hereinabove that he has not ventured beyond the bounds shown in the aforesaid Survey Map dated 13th February, 2012 during the construction of the said approved structure till the present date, and neither does he intend to do so in the future.

13. My client submits that notwithstanding what is stated in Paragraph No. 10 hereinabove, he is ready and willing to submit his developed properties for another survey under the supervision of the officers of Kulgaon - Badlapur Municipal Council and the officers of the Department of Survey with respect to the said plot of land, and thus to put at rest the false allegations and insinuations of trespass being made by the said Complainants. My client further submits that through the aforesaid exercise, the metes and bounds in concern with the bifurcation of the respective parcels of land belonging to the Complainants and Smt. C. H. Dhumal can be confirmed, and the matter shall be put to a final and conclusive rest.

14. My client further states that he applied for "Non - Agriculture Use" Certificate from the Offices of District Collector, Thane on 27th March, 2012 with respect to the said parcel of land admeasuring 42 R i.e. 4250 Square meters. In consequence to the aforesaid application dated 27th March, 2012, the District Collector, Thane after following the due laid down procedures for scrutiny and verification as provided

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under the Maharashtra Land Revenue Code (MLRC), 1966 issued to my client along with Smt. C. H. Dhumal, the "Non - Agriculture" Use Certificate dated 8th January, 2013 with respect to the parcel of land admeasuring 42 R i.e. 4250 Square Metres. Annexed herewith and marked as **Annexure 22** is a xerox copy of the aforesaid "Non Agriculture Use" Certificate dated 8th January, 2013, and my client craves leave to refer to and rely upon the said document, when produced. My client submits that the existence of the aforesaid Certificate shows that the authorities of the Revenue Department have verified and scrutinized the title, rights and interests of my client with respect to the said parcel of land admeasuring 4250 Square Meters over which the said structure is being developed by my client. My client further submits that after the said scrutiny and verification, nothing remains to be further tested on the anvil of statutory fair play to determine the exact extent and layout of the said parcel of land admeasuring 4250 Square Meters which is designated for the planned development by my client. Thus in consequence, my client submits that as far as any relevant statutory authority including Kulgaon - Badlapur Municipal Council is concerned, the matter concerning the exact extent and layout of the parcel of land admeasuring 42R i.e. 4250 Square Meters has already been finally and irrevocably put to rest.

15. In conclusion my client submits that the allegations made by the Complainant with respect to trespass and dumping of construction material against his firm are frivolous, mischievous and totally incorrect. My client further submits the apprehensions of the complainants of the likelihood of being dispossessed and alienated from their parcel of land are unfounded and mischievous. My client instead submits that the said complaints are being made by the said Complainants through the exertions and agencies of the designated Attorney only with a view to cause delay in the development of the said parcel of land, and in consequence extort monies from my client in the nature of a coerced settlement. My client submits that by his aforesaid exhaustive submissions, the true and correct facts have been presented succinctly before your good offices, and the nefarious designs of the complainants and their designated Attorney are suitably exposed. My client further submits that he is also **contemplating institution of criminal proceedings** against the Complainants and their designated Attorney under the appropriate provisions of the Indian Penal Code for the aforementioned acts of **malicious prosecution** against himself in concern with the present allegations. My client further submits that he is also contemplating civil remedies against the Complainant and their designated Attorney by way of **exemplary damages** due to the losses being caused to his

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business on account of the aforesaid nefarious and mischievous complaints.

16. My client also submits that Sale Agreements with respect to 81 Number of saleable apartment units out of the total 110 approved tenements of the said structure comprising of four wings have already been executed, and that the Agreements of Sale with respect to the balance unsold tenements are under process. My client submits that the details of the aforesaid transactions are in public domain, and also in the knowledge of the Complainants and their designated Attorney who are thus in consequence fully aware of the vulnerability of my client on account of the execution of the said transactions. My client submits that the Complainant and their Attorney are attempting to exploit the aforesaid vulnerability of my client by cornering him through recourse to intentional acts of vexatious prosecution through the institution of such said frivolous Complainants with statutory bodies and institution of Civil Suits in a court of law to extract optimum pecuniary advantages from my client at this point of critical vulnerability in this development venture. My client states that these intentional attempts to coerce him to a settlement by the Complainants and their designated Attorney is evident from the long delay of almost one year taken by the said Complainants to initiate

the said complaints. My client submits that any act of encroachment/ trespass as alleged by the Complainants should have been evident right from the inception stage of the said development work i.e. in March - April, 2012 itself, by which time the foundation work and the plinth work of the said approved structures had been completed by my client. My client however takes pains to bring to your kind attention the fact that the first complaint was made by the Complainants on 20th February, 2013, when the construction had already progressed upto Third/ Fourth Floor levels in the said approved structure.

17. My client therefore prays that in view of the aforementioned and exhaustive facts on record before your esteemed self that clearly show that the said approved construction is being actuated very much within the confines of the parcel of land identified in the aforementioned permissions granted by the Kulgaon - Badlapur Municipal Council, the "Stop Work" Order dated 26th June, 2013 may kindly be revoked with immediate effect. My client submits that the dispute, if any, in concern with the rights, titles and interests with respect to the land being developed be left for agitation by the aggrieved parties before the appropriate Civil Court. My client further submits that the offices of Kulgaon - Badlapur Municipal Council should not be allowed to be used by the Complainants to settle

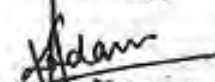
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property related disputes, if any, with my client. Otherwise, the dispute shall be exposed for determination before multiple authorities, thus becoming a cause of grave injustice to my client.

Yours truly,


[Colonel (Retd) Abhijit G. Kadam]
Advocate High Court


[Shri Sandesh Sable]

Proprietor, Shrutika Constructions

Enclosures :-

As per the List attached with the Compilation of Annexures.