**KAMLAKAR R SHENOY**

**903, Vaishali, B Apartment, Motisha Lane (Love lane) opp. Telephone Exchange, Mazgaon, Mumbai-400010. Mobile no. 9870987359.**

DATE: 5.3.23

90/Sanction to prosecute / Addl MC, DMC ----, Asst Com E ward Mr. -----, Designated Officer ------- /

**Application for**

1. **Sanction to prosecute Addl MC, DMC --------, Asst Com ---- ward ------, Designated Officer Mr. ------------, -----ward.**
2. **Registration of FIR against above three officers of BMC for not discharging their official duty and by not acting diligently and as expeditiously thereby protecting the illegal structures / construction/ encroachment at ----------------------------address**

TO,

1. Chief Minister (Maharashtra State)
2. Chief Secretary Maharashtra state
3. ADDL. CHIEF SECRETARY HOME,
4. PRINCIPAL SECRETARY UDD
5. MUNICIPAL COMMISIONER BMC, Mumbai.
6. Governor of Maharashtra

Respected sirs,

Kamlakar Shenoy

v/s

--------------- & others

1. The complainant herein is a law abiding and peace loving citizen residing at the address mentioned herein above.

**Purpose of filing the complaint.**

1. The complainant most respectfully submits that he has no hostility towards any individual officers but against the system of corrupt practices adopted by certain high ranking officials who cause wrongful loss to public at large and under misplaced belief that law cannot deter them from doing illegal activities which are in violation of provision of law and against the interest of public at large. There is a misconception amongst certain class of high ranking officers that they are above law and any violation committed by them shall be condoned.
2. The Complainant states that in fact the complainant is having very good personal relationship with these Respondents / Accused officers. However, the system has become so corrupt that hardly any public servant dares to act in accordance with law and blatantly violate all provision of law, under the guise of discharging the official duty.
3. **The Complainant states that the nation is under threat from ECONOMIC TERRORISM within the nation. This economic terrorism is more dangerous than the cross border terrorism. Such economic offenders who commit such economic offences destroy the nation and cause grave / severe losses to nation which is detrimental for the progress of the nation. The acts of such economic offenders are no less than waging an economic war against the state. Unfortunately, such offenders who act as economic terrorist are protected and aided by certain class of the Government servant/ police/ /EOW/ ACB.**

**Details of the accused.**

1. The complainant states that the accused no.1 is Addl MC, Accused no.2, DMC zone----, Accused no.3 is Asst Comm ----- ward, accused no.4 is Designated officer of ----- ward.

**Gist of offence in complaint.**

1. The complainant has intended to file complaint for criminal prosecution against above 3 officers for not taking action against the illegal constructions / encroachment at address ---------------------------

Hereto annexed and marked as **Exhibit-A** is specimen of some of the 351 Notices issued by Designated officer i.e. accused no. 4.

1. The complainant vide letter dt. --- ----- ------ has reminded the above accused persons about the lapse of 7 days and failure to file Caveat.

Hereto annexed and marked as **Exhibit-B colly** is copy of the three letters dt. --------- ------- -------

1. **Role of Addl MC, DMC ----- , Asst MC --------- & D.O. Mr. ---------.**
	* + - 1. The accused was seized with knowledge and information and well aware that the status of the proposal can be seen immediately on line.
				2. The accused should have taken immediate action against the asst MC and Designated Officer, when she informed that these officers have not taking action against the illegal constructions since several years.
				3. He should have immediately directed demolition and other action.
				4. Has delayed the demolition of illegal structures and encroachment beyond reasonable period and more particularly after issuance of notice u/s 351 of MMC act.
				5. The accused has also violated the provision of regulation 10 Prevention of delay in discharge of duty as well MMC Act section 64-C to dispose the complaint.

1. The accused was well aware of the following Supreme Court citations and circulars which he has blatantly violated

**Dipak Kumar Mukharje v/s Kolkata Mun. corp & others**

**in civil appeal 7356 of 2012**

**(arising out of SLP ( C) no. 23780 of 2011**

**decided on 8.10.12.**

1. Illegal constructions: Fundamental rights:
2. The accused was well aware of the following Supreme Court citations and circulars

**Criminal appeal 689 of 2020**

**(arising out of SLP (criminal) no. 4126 of 2020**

**Ali Akbar Shroff v/s state of Maharashtra**

The Hon. Court has observed at

1. Page 1, para 2: BMC must have slept over the matter as no action was taken …
2. Page 4, para 2: we do not know whether the police has booked any officers who were responsible to take action at relevant stage of time and failed in duty. If not certainly the state police need to look into this aspect of culpability of any officers
3. The accused was well aware of the following Supreme Court citations and circulars no. CE/Conf./1332/Eng. of 20/11/’03 lists out punishments

THE FOLLOWING GUIDELINES ARE ISSUED:

1.      Failure to detect unauthorized work/unauthorized change of user

(a)   Unauthorised work of minor nature not involving addition to F.S.I. as well as those not detrimental to the structure. Maximum Punishment -- Fine upto Rs. 1,000/- ; Minimum
Punishment – Censure.

(b)   Unauthorised work not involving addition to F.S.I. but detrimental to the structure. Max -- Removal from service; Min -- Withholding of next increment for 1 year with permanent effect on future increment.

(c)    Addition to F.S.I.

(i)                 Residential. Max -- Removal from service. Min -- Withholding of next increment for 1 year with permanent effect on future increment.

(ii)               Commercial. Same as above.

(d)   Change of user from Residential to Commercial and/or Industrial. Max -- Withholding of next increment for 1 year with permanent effect on future increment. Min -- Censure / Fine upto Rs. 1,000/-

(e)   Change of user from Commercial / Industrial to Residential. Punishments -- Same as (d).

(f)     Change of User from Industrial to Commercial and vice-versa. Punishments -- Same as (d).

2.    Work detected but action not taken. Max -- Removal from service. Min -- Withholding of next increment for 2 years with permanent effect on future increment.

3.   Action under relevant provisions of Act taken but not pursued vigorously.  Max -- Removal from service. Min -- Withholding of next increment for 1 year with permanent effect on future increment.

**4.    Action pursued in a defective way so as to ensure that action fails. Max – Dismissal from service. Min – Removal from service.**

**5.      Action withdrawn/dropped unauthorized without competent sanction. This includes tampering of records. Max – Dismissal from service. Min – Removal from service.”**

1. The Complainant states that the accused has
	1. disobeyed direction of law causing injury to the occupants of the Vaishali B wing.
	2. Disobeyed the direction of law protecting the illegal construction and illegal encroachment
	3. Failed to act as per circular 3.5.2018, to file Caveat before appropriate Court and also willfully failed to direct the law department to file caveat, (inspite of my repeated reminders0 immediately after serving of notice u/s 351 MMC act thereby protecting /facilitating the encroachers to get ex-parte stay on the notice u/s 351 of MMC act.
	4. Failed to take action of demolition after lapse of 7 days.
	5. Failed to maintain register of complaint as per circular dt. 18.1.2013 and comply with the direction of law therein.

**Dishonest intentions and ulterior motives of the accused.**

1. The Complainant states that the accused willfully and deliberately failed to take action on the pretext of forwarding the complaints to the main accused, without calling for any say/ report and follow up thereafter. **It is ridiculous to see the top bureaucrats themselves violating all provisions of law and shielding the accused**.
2. The Complainant states that the accused has not acted diligently and expeditiously, and did not taken action against sub ordinate officers thereby committing
	1. willful or intentional delay to discharge their official duty in carrying out the official work assigned
	2. dereliction of duties
	3. shall be liable for appropriate for appropriate disciplinary action under the Maharashtra Civil services (Discipline and Appeal) Rules 1979 or any other relevant disciplinary rules applicable to such employee.
3. The Complainant states that the accused , did not take any action nor made any attempt to counsel the complainant who has exposed the misdeeds which have been causing wrongful loss to BMC.
4. The complainant states that the acts committed by accused were not in good faith nor it is done as intended to be done under this Act or any rule made thereunder. Hence, the act done was with dishonest intentions and ulterior motives. Hence the accused should have acted immediately and not taken such unreasonable time.
5. The Complainant states that the accused failed to discharge their official duty by disobeying the direction of law and framed incorrect records and writing with dishonest intentions to cause hurt and injury to public at large and shield the powerful offenders from prosecution and punishment.
6. The Complainant states that has made out a case of
	* 1. willful and deliberate failure to discharge their official duty against the Respondents
		2. they are liable for disciplinary actions including departmental enquiry and others.
		3. Their failure to discharge duty shall be recorded in the service register as well as in confidential report.
7. The Complainant states that You being competent authority is required to
	1. direct / conduct department enquiry and initiate disciplinary action against the above Respondents
	2. to register FIR u/s 166, 167, 217, 218 IPC against the above accused.
	3. To grant sanction / permission to Complainant to prosecute the accused under all provisions of criminal and civil laws.

Mumbai: Complainant

This ----------------

**Provision of law and sections to be relied upon by BMC and Police**

1. The local police and BMC is duty bound to take action of removal of encroachment as well as to prosecute the habitual offences.
2. Section 268, 269, 270, 429, 431, 441 IPC section 102 and 115 C Bombay Police Act
3. 516 AAA, MMC act and MRTP section 52 & 53.
4. **522 MMC act:** it shall be the duty of every police officer in (MCGM) to communicate without delay to the proper municipal officer any information which he receives of a design to commit or of the commission of offence against this Act or against any regulation or by-law made under this Act and to assist any Municipal officer or servant, reasonably demanding his aid for the lawful exercise of any power vesting in the Commissioner, or in such Municipal officer or servant under this Act. **Section 149 and 152 CRPC.**
5. **Bombay High Court judgement dt. 3.5.2019 in PIL 78 of 2013:** police shall be responsible to keep public spaces free from encroachment
6. **Police commissioner circular dt. 19.6.19:** police shall be responsible to keep public spaces free from encroachment as directed in para 5 of the order dt. 3.5.2019

**“we direct the Commissioner of police, Mumbai to issue office order directing all BEAT MARSHALLs, to keep an eye on the pavements in the area of the beat, and if any encroachment is noted, information be immediately given for police assistance so that the encroacher is not able to re-erect temporary structure erected by the encroachers on pavement and road and shall be demolished.”**