



माहितीचा
अधिकार

राज्य माहिती आयोग, मुख्यालय, मुंबई
माहितीचा अधिकार अधिनियम, २००५ मधील कलम १९ (३) अन्वये
दाखल झालेले अपील

क्र. मुमाआ/नों.क्र.३१९७/२२/अ.क्र.५८८२/२५/०१
क्र. मुमाआ/नों.क्र.२२३१९७/२२/अ.क्र.५८८३/२५/०१

Shri. Madhukant P. Shukla
Flat No. 18, 4th floor, Firdaus Building,
56, Marine Drive, Netaji Subhash Chandra Bose Road,
D Road, Churchgate, Mumbai – 400020.

विरुद्ध

जन माहिती अधिकारी तथा प्रशासकीय अधिकारी (इ.प्र.) शहर
बृहन्मुंबई महानरपालिका, कार्यकारी अभियंता (इ.प्र.) शहर-१ यांचे कार्यालय,
नविन महापालिका इमारत भगवान वाल्मिकी चौक, विद्यालंकार मार्ग,
हनुमान मंदिरच्या समोर, साल्ट पॅन रोड, अन्टॉप हिल, वडाळा पूर्व मुंबई- ४०० ०३७.

प्रथम अपीलीय अधिकारी तथा सह प्रमुख अधिकारी (इ.प्र.) शहर
बृहन्मुंबई महानरपालिका, कार्यकारी अभियंता (इ.प्र.) शहर-१ यांचे कार्यालय,
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हनुमान मंदिरच्या समोर, साल्ट पॅन रोड, अन्टॉप हिल, वडाळा पूर्व मुंबई- ४०० ०३७.

द्वितीय अपील अर्ज सुनावणी दिनांक : १८.०९.२०२५

अपीलकर्ता	:	उपस्थित
विद्यमान जन माहिती अधिकारी	:	उपस्थित
प्रथम अपीलीय अधिकारी	:	उपस्थित

आज सुनावणीच्या वेळी अपीलार्थी, विद्यमान जन माहिती अधिकारी तथा प्रशासकीय अधिकारी (इ.प्र.) शहर, श्री. विनायक माने व विद्यमान प्रथम अपीलीय अधिकारी तथा सह प्रमुख अधिकारी (इ.प्र.) शहर यांचे प्रतिनिधी श्री. श्रीकांत खैरनार उपस्थित आहेत.

अपीलार्थी यांनी असे विशद केले की, Certified Floor Plan of the ४th floor of Firdaus Building at ५६, Marine Drive, Netaji Subhash Chandra Bose Road, D Road, Churchgate, Mumbai – ४०००२० संबंधित इमारतीचा आराखडा व OC Plan बदल माहितीची मागणी केली आहे. परंतु जन माहिती अधिकारी यांच्याकडून माहिती प्राप्त झाली नाही.

या अपिलासंदर्भातील कागदपत्रांचे अवलोकन केल्यावर तसेच युक्तिवाद ऐकून घेतल्यानंतर आयोग या निष्कर्षावर येत आहे की, अपीलार्थी यांनी दि. ११.०८.२०२१ रोजी मूळ माहिती अर्जान्वये “Certified Floor Plan of the 4th floor of Firdaus Building at 56, Marine Drive, Netaji Subhash Chandra Bose Road, D Road, Churchgate, Mumbai – 400020” संबंधित दोन मुद्द्यांची माहितीची मागणी केली असून ती पुढीलप्रमाणे आहे :-

1. Provide Certified Copy, if any, of changed Floor Plan approved by the BMC after the Original Floor Plan for the 4th Floor, Firdaus Building, 56, Marine Drive, Netaji

Subhash Chandra Bose Road, Mumbai 400020 in A Ward jurisdiction. If there is no subsequent Floor Plan approved by the BMC other than the Original Floor Plan then that should be stated.

2. Provide Certified Copy of the prevalent approved Floor Plan (other than Original Floor Plan) by the BMC of the 4th Floor, Firdaus Building, 56, Marine Drive, Netaji Subhash Chandra Bose Road, Mumbai 400020 in A Ward jurisdiction. If prevalent Floor Plan and Original Floor Plan are the same then that should be stated. याबाबत माहितीची मागणी केली आहे.

तत्कालीन जन माहिती अधिकारी तथा प्रशासकीय अधिकारी (इ.प्र.) शहर यांनी "it is to inform you that, as per Survey Remarks, building file records are maintained with reference to CTS/ C.S.No., its Division & EB No. You have not mentioned C.S. No./ EB No. with Division in your application absence of said information file for which information is sought, can not be furnished" असे उत्तरान्वये कळविण्यात आले आहे. अपीलार्थी यांना कळविलेल्या शहर भूकर क्रमांकानुसार EB/206/A, EB/3086/A, EB/2319/A या तीन धारिणी उपलब्ध असल्याचे अभिप्राय सर्वेक्षण विभागाने दिले आहेत. तथापि त्यापैकी धारिणी क्र. EB/2319/A ही अपीलार्थी यांनी नमूद केलेल्या शहर भूकर क्रमांकाशी संबंधित नसल्याचे अभिप्राय विभागीय लिपीकांती दिले आहेत. त्यामुळे अपीलार्थी यांना अभिलेख विभागात उपलब्ध असलेल्या दोन धारिणी निरीक्षणासाठी देण्यात येतील, असे आदेशित केले आहे. अपीलार्थी यांनी मागणी केलेली माहिती पुसट स्वरूपात आहे असे नमूद केले असून नकाशा हा कोणत्या पद्धतीने तयार केला जातो याचा तपशिल उघड होत नाही. त्यामुळे अपीलार्थी यांना अपेक्षित असणाऱ्या Emergency Exit Plan नुसार प्रत उपलब्ध नसून उपलब्ध नस्ती तळ मुजला बाबत आहे तरी ती देता येईल, असे प्रथम अपीलार्थी यांनी नमूद केले आहे. त्यानंतर अपीलार्थी यांनी द्वितीय अपील अर्ज दाखल केला आहे. प्रस्तुत प्रकरणी अपीलार्थी यांनी मागणी केलेल्या माहिती संदर्भात सदर इमारत ही सन १९४५ काळातील असून दस्तावेज जुना आहे. जन माहिती अधिकारी यांनी अपीलार्थी यांना माहिती दाखविली आहे.

उरोक्त प्रकरणात अपीलार्थी यांनी अंतिम आदेशाची वाट न पाहता सुनावणी दरम्यान निश्चित झाल्याप्रमाणे दि. २५.०९.२०२५ रोजी दुपारी ३.०० ते ५.०० वा विद्यमान जन माहिती अधिकारी तथा प्रशासकीय अधिकारी (इ.प्र.) शहर यांच्या कार्यालयात उपस्थित राहावे. त्यानंतर विद्यमान जन माहिती अधिकारी तथा प्रशासकीय अधिकारी (इ.प्र.) शहर यांनी अपीलार्थी यांना शहर भूकर क्रमांकानुसार EB/206/A, EB/3086/A, EB/2319/A या तीन धारिणीचे निरीक्षण देण्यात यावे, त्यानंतर अपीलार्थी यांना हव्या असलेल्या व त्यांनी चिन्हांकित केलेल्या माहितीच्या स्वच्छ छायांकित प्रती व छायाचित्रे विनामुल्य देण्यांत यावी. जर अपीलार्थी यांच्या म्हणण्यानुसार उपरोक्त तीन ही नस्तीमध्ये कागदपत्रे गहाळ झाली असल्यास किंवा जाणुनबुजून गहाळ केली असल्यास तर महाराष्ट्र अभिलेख अधिनियम, २००५ अन्वये कलम ४ व कलम ६ नुसार दस्तावेज गहाळ होण्यास कोण जबाबदार हे निश्चित करून कार्यवाही करून FIR दाखल करावा व त्याची प्रत आयोगास पाठवावी. तसेच यासंदर्भात उप प्रमुख अभियंता, इमारत प्रस्ताव, शहर यांनी त्यांच्या स्तरावर माहिती संबंधित पडताळणी करून योग्य ती कार्यवाही करावी. तसेच यासंदर्भात कायदेशीर वस्तुस्थिती खालीलप्रमाणे स्पष्ट केली आहे :- **मा. मुंबई उच्च न्यायालय यांनी Vivek Vishnupant Kulkarni vs. the State of Maharashtra and others (supra), it has been held by this Court that as per Section 9 of MPR Act, contravention of the**

provisions of Section 4 or 8 is made punishable. Section 4 of the MPR Act speaks about taking out public records without prior approval of the State Government. Here no such case is made out that anybody has taken out the public record without the approval of the State Government. Unless the facts are brought invoking the ingredients of the offence, directions to register offence cannot be issued. Further, Section 8 of the Act contemplates about destruction or otherwise dispose of the public record except in such manner and subject to such conditions as may be prescribed. Here, merely because the record is not available, we cannot jump to the conclusion that it is destroyed or otherwise disposed of. The information that was supplied to the petitioner on 20th March 2018 would show that Nagar Panchayat, since its inception i.e. 24 th February 2015, has not granted any permission for erection of mobile towers and has not entered into any agreement. The information that was called by the petitioner was from 1st January 2014 to 16th February 2017. If there was no occasion for grant of permission and entering into any agreement from 24 th February 2015 till 16th February 2017, then question of supplying the copies of the same will not arise. The period prior to 24 th February 2015 i.e. from 1st January 2014 relates to the Gram Panchayat and unless it is shown that the entire record has been handed over to the Nagar Panchayat authorities by the then Gram Panchayat; officers of the Nagar Panchayat cannot be held responsible for supply of those documents. Though the Right to Information Act may not be applicable to the mobile companies, however, the petitioner appears to have not made any correspondence with the mobile companies. 11. We would like to reiterate that non-availability of the record with the Nagar Panchayat cannot be inferred as destruction of the record and therefore, this cannot be taken as a fit case to exercise constitutional powers of this Court to direct registration of the offence. This Court is also of the view that misuse of the RTI Act has to be appropriately dealt with; otherwise the public would lose faith and confidence in this "sunshine Act". A beneficent Statute, when made a tool for mischief and abuse must be checked in accordance with law. **व मा. मुंबई उच्च न्यायालय खंडपीठ औरंगाबाद यांनी क्रिमिनल रिट प्रिटीशन नंबर १४८४/१९ यात स्वयंस्पष्ट आदेश पारित केले असून, यातील जन माहिती अधिकारी यांची भूमिका याविषयी सविस्तर भाष्य केलेले आहे.** 9. In Vivek Vishnupant Kulkarni vs. the State of Maharashtra and others (supra), it has been held by this Court that as per Section 9 of MPR Act, contravention of the provisions of Section 4 or 8 is made punishable. Section 4 of the MPR Act speaks about taking out public records without prior approval of the State Government. Here no such case is made out that anybody has taken out the public record without the approval of the State Government. Unless the facts are brought invoking the ingredients of the offence, directions to register offence cannot be issued. Further, Section 8 of the Act contemplates about destruction or otherwise dispose of the public record except in such manner and subject to such conditions as may be prescribed. Here, merely because the record is not available, we cannot jump to the conclusion that it is destroyed or otherwise disposed of. The information that was supplied to the petitioner on 20th March 2018 would show that Nagar Panchayat, since its inception i.e. 24th February 2015, has not granted any permission for erection of mobile towers and has not entered into any agreement. The information that was called by the petitioner was from 1st January 2014 to 16th February 2017. If there was no occasion for grant of permission and entering into any agreement from 24th February 2015 till 16th February 2017, then question of supplying the copies of the same will not arise. The period prior to 24th February 2015 i.e. from 1st January 2014 relates to the Gram Panchayat and unless it is shown that the entire record has been

handed over to the Nagar Panchayat authorities by the then Gram Panchayat; officers of the Nagar Panchayat cannot be held responsible for supply of those documents. Though the Right to Information Act may not be applicable to the mobile companies, however, the petitioner appears to have not made any correspondence with the mobile companies. 10. As regards non-supply of the information is concerned, action appears to have been taken and cost is also imposed, therefore, the respondents cannot be held responsible in any way for the action to be taken under Section 9 of the MPR Act. Right to Information Act came into force to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. However, this Act should not be misused by anybody. 11. We would like to reiterate that non-availability of the record with the Nagar Panchayat cannot be inferred as destruction of the record and therefore, this cannot be taken as a fit case to exercise constitutional powers of this Court to direct registration of the offence. तसेच **Saudagar, Mohammad Rafi Vs State Aurangabad bench**

दि. १७.०१.२०२३ नुसार (1) The records officer shall, in the event of any unauthorised removal, destruction, defacement or alteration of any public records under his charge, forthwith take appropriate action for the recovery or restoration of such public records. (2) The records officer shall submit a report in writing to the Director without any delay on any information about any unauthorised removal, destruction, defacement or alteration of any public records under his charge and about the action initiated by him and shall take action as he may deem necessary subject to the directions, if any, given by the Director. (3) The records officer may seek assistance from any Government officer or any other person for the purpose of recovery or restoration of the public records and such officer or person shall render all assistance to the records officer." 8. (1) Save as otherwise provided in any law for the time being in force, no public record shall be destroyed or otherwise disposed of except in such manner and subject to such conditions as may be prescribed. 19 (2) No record, which is more than hundred years old on the date of commencement of the Maharashtra Public Records Act, 2005, shall be destroyed except where in the opinion of the Director, it is so defaced or is in such condition that it cannot be put to any archival use." "9. Whoever contravenes any of the provisions of section 4 or section 8 shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to ten thousand rupees or with both." 9. In Vivek Vishnupant Kulkarni vs. the State of Maharashtra and others (supra), it has been held by this Court that as per Section 9 of MPR Act, contravention of the provisions of Section 4 or 8 is made punishable. Section 4 of the MPR Act speaks about taking out public records without prior approval of the State Government. Here no such case is made out that anybody has taken out the public record without the approval of the State Government. Unless the facts are brought invoking the ingredients of the offence, directions to register offence cannot be issued. Further, Section 8 of the Act contemplates about destruction or otherwise dispose of the public record except in such manner and subject to such conditions as may be prescribed. Here, merely because the record is not available, we cannot jump to the conclusion that it cwp1484.19 is destroyed or otherwise disposed of. The information that was supplied to the petitioner on 20th March 2018 would show that Nagar Panchayat, since its inception i.e. 24 th February 2015, has not granted any permission for erection of mobile towers and has not entered into any agreement. The information that was called by the petitioner was from 1st January 2014 to 16th February 2017. If there was no occasion for grant of permission and

entering into any agreement from 24 th February 2015 till 16th February 2017, then question of supplying the copies of the same will not arise. The period prior to 24 th February 2015 i.e. from 1st January 2014 relates to the Gram Panchayat and unless it is shown that the entire record has been handed over to the Nagar Panchayat authorities by the then Gram Panchayat; officers of the Nagar Panchayat cannot be held responsible for supply of those documents. Though the Right to Information Act may not be applicable to the mobile companies, however, the petitioner appears to have not made any correspondence with the mobile companies. 10. As regards non-supply of the information is concerned, action appears to have been taken and cost is also imposed, therefore, the respondents cannot be held responsible in any way for the action to be taken under Section 9 of the MPR Act. Right to Information Act came into force to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority. However, this Act should not be misused by anybody. 11. We would like to reiterate that non-availability of the record with the Nagar Panchayat cannot be inferred as destruction of the record and therefore, this cannot be taken as a fit case to exercise constitutional powers of this Court to direct registration of the offence. या निर्देशासह सदर द्वितीय अपील मान्य करुन निकाली काढण्यात येत आहे.

आदेश

१. वरील विवेचनानुसार जन माहिती अधिकारी यांनी कार्यवाही करावी.
२. वरील दोन्ही अपिले निकाली काढण्यात येत आहे.

ठिकाण : मुंबई

दिनांक : १८.०९.२०२५



(राहुल भा. पांडे)

राज्य मुख्य माहिती आयुक्त

प्रत :- १. उप प्रमुख अभियंता, इमारत प्रस्ताव, शहर, बृहन्मुंबई महानगरपालिका, कार्यकारी अभियंता (इ.प्र.) शहर-१ यांचे कार्यालय, नविन महापालिका इमारत भगवान वाल्मिकी चौक, विद्यालंकार मार्ग, हनुमान मंदिरच्या समोर, साल्ट पॅन रोड, अन्टॉप हिल, वडाळा पूर्व मुंबई- ४०० ०३७. यांनी योग्य त्या कार्यवाहीसाठी प्रत अग्रेषित.