

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 669 OF 2024
WITH
INTERIM APPLICATION NO. 13276 OF 2024
IN
APPEAL FROM ORDER NO. 669 OF 2024

Munna Noor Mohammad Solanki ... Appellant

V/s.

Mumbai Metropolitan Regional
Development Authority ... Respondent

WITH
APPEAL FROM ORDER NO. 679 OF 2024
WITH
INTERIM APPLICATION NO. 13318 OF 2024
IN
APPEAL FROM ORDER NO. 679 OF 2024
WITH
APPEAL FROM ORDER NO. 680 OF 2024
WITH
INTERIM APPLICATION NO. 13320 OF 2024
IN
APPEAL FROM ORDER NO. 680 OF 2024
WITH
APPEAL FROM ORDER NO. 682 OF 2024
WITH
INTERIM APPLICATION NO. 13327 OF 2024
IN
APPEAL FROM ORDER 682 OF 2024
WITH
APPEAL FROM ORDER NO. 681 OF 2024
WITH
INTERIM APPLICATION NO. 13323 OF 2024
IN

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APPEAL FROM ORDER NO. 681 OF 2024
WITH
APPEAL FROM ORDER NO. 686 OF 2024
WITH
INTERIM APPLICATION NO. 13347 OF 2024
IN
APPEAL FROM ORDER NO. 686 OF 2024
WITH
APPEAL FROM ORDER NO. 677 OF 2024
WITH
INTERIM APPLICATION NO. 13299 OF 2024
IN
APPEAL FROM ORDER NO. 677 OF 2024
WITH
APPEAL FROM ORDER NO. 672 OF 2024
WITH
INTERIM APPLICATION NO. 13279 OF 2024
IN
APPEAL FROM ORDER NO. 672 OF 2024
WITH
APPEAL FROM ORDER NO. 678 OF 2024
WITH
INTERIM APPLICATION NO. 13314 OF 2024
IN
APPEAL FROM ORDER NO. 678 OF 2024
WITH
APPEAL FROM ORDER NO. 673 OF 2024
WITH
INTERIM APPLICATION NO. 13288 OF 2024
IN
APPEAL FROM ORDER NO. 673 OF 2024
WITH
APPEAL FROM ORDER NO. 675 OF 2024
WITH
INTERIM APPLICATION NO. 13294 OF 2024
IN
APPEAL FROM ORDER NO. 675 OF 2024

WITH
APPEAL FROM ORDER NO. 676 OF 2024
WITH
INTERIM APPLICATION NO. 13296 OF 2024
IN
APPEAL FROM ORDER NO. 676 OF 2024

Mr. Shailesh Shah, Senior Advocate a/w Mr. Irshad Shariff, Mr. Suhail Shariff & Ms. Revaa Kadam i/b Falcon Legal for the Appellant.

Mr. Akshay P. Shinde for the Respondent - MMRDA.

Mr. Sachin Vajale a/w Ms. Neeta Jadhav i/b Ms. Komal Punjabi for the Respondent - MCGM.

CORAM : FARHAN P. DUBASH, J.

DATE : 28th APRIL 2026

P.C.:

1. By consent of parties, the Appeals are taken up for final hearing at the stage of admission.
2. The present 12 Appeals challenge 12 separate orders, all dated 20th August 2024 (*impugned order*) passed by the Trial Court in 12 separate Notices of Motion taken out by 12 separate Appellants/original Plaintiffs in the Trial Court in 12 separate suits filed in/about 2023 *inter alia* seeking protective reliefs against and challenging a common notice dated 8th November 2023 (*said notice*) issued by the Respondent / original Defendant/Mumbai Metropolitan

Region Development Authority (*MMRDA*) under Section 55 of the Maharashtra Regional and Town Planning Act, 1966 (*said Act*) in respect of unauthorized construction in separate residential flats of 24 flat owners of Universal Garden building, A-Wing, situated on Sufi Sayyed Kamal Road, Amrut Nagar, Jogeshwari (W), Mumbai 400102 (*suit flat*). By the impugned order passed on 20th August 2024, the Trial Court dismissed the 12 separate Notices of Motion that were preferred by the Appellants/Original Plaintiffs declining to grant any interim reliefs, as sought therein.

3. In addition to these 12 suits (in which the impugned orders have been passed), 6 other flat purchasers (out of the 24 flat purchasers to whom the said notice was issued by MMRDA) have also approached the Trial Court, albeit in/around 2025, seeking similar reliefs, as sought by their 12 neighbors. However, considering the impugned order dated 20th August 2024 that was already passed in the matter, the same Trial Court has refused ad-interim reliefs to the said 6 flat purchasers, who have also impugned the said order dated 24th February 2025 before this Court. All 18 flat purchasers (12 + 6 = 18) Appellants are represented by the same set of advocates and counsel. The Respondent/MMRDA is also represented by the same set of advocates and counsel. Accordingly, with the consent of parties, all 18 Appeals

have been heard together and whilst the present order deals with and disposes of the said 12 Appeals, the remaining 6 Appeals (which impugn the ad interim order dated 24th February 2025) are dealt with and disposed of by a separate common order, also of today's date.

4. Mr. Shailesh Shah, learned Senior Advocate who appears on behalf of the Appellants points out that the said notice is motivated and issued by the Respondent/MMRDA at the behest of the Developer to cause harassment to his clients. He further points out that the Developer had obtained the Intimation of Disapproval and Commencement Certificate as far as in 2009 and 2010 and completed the construction of the building in 2013/2014, after which the Occupancy Certificate was also obtained on 21st February 2014. Mr. Shah points out that the Inspection Report dated 26th October 2023 on which the said notice is based, was not prepared in accordance with law inasmuch as, the Inspection Officer did not inspect all the flats which belong to his clients. He invites my attention to his client's reply dated 1st December 2023 in response thereto. He further contends that the unauthorized construction referred to in the said notice was not carried out by his client, but was in fact undertaken by the Developer prior to handing over possession of the flat. He submits that, given the similarity of the unauthorized construction across other flats in the building, it is

evident that the same was carried out by the Developer and not by the individual occupants.

5. Lastly, and without prejudice to his main submissions, he submits that if for any reason, this Court were not inclined to accept his main submission/s, time ought to be given to his clients to regularize the alleged unauthorized construction since the same is within their residential flats which is occupied by them since more than 10 years. He therefore submits that the impugned order passed by the Trial Court which dismissed his clients' Notices of Motion which sought interim protection against the said notice is required to be interfered with by this Court.
6. As against this, Mr. Akshay Shinde, learned Counsel appearing on behalf of the Respondent/MMRDA, submits that the sanctioned building plan provides for a pergola structure, which is essentially of a hollow nature, and that the same has been structurally altered by the members of the Society by using grills, glass, bricks, etc., in violation thereof by enclosing the balconies on floor nos. 19 to 22 by 24 flat owners. He therefore submits that the said notice under Section 55 of the said Act has been suitably issued against the Appellants.
7. He further points out that considering the nature of the unauthorized

construction, namely, enclosing of the balcony which is outside the building line, it also poses a hazard and risk to the public at large, including passers-by in the vicinity of the building. He submits that this authorised construction was detected by his clients' officers during a survey that was conducted by them and which violation is plainly and clearly visible to any person from the public road. He accordingly submits that the action of the Respondent/MMRDA is of a larger public interest and also considering the safety of the inhabitants. He submits that the Respondent/MMRDA being the Planning Authority has thus passed the impugned order exercising the jurisdiction vested in it under Section 55 of the said Act and under Section 149 thereof, no such order can be challenged in a civil court unless it is demonstrated as '*perverse*.' This has not been successfully established in the present case and therefore, the impugned order has correctly rejected the reliefs sought by the Appellants/original Plaintiffs and declined to interfere with the said notice.

8. Lastly, in response to the without prejudice submission made by the Appellants, he submits that there is no question of regularization, since there is no provision for the same, under the said Act. He therefore submits that no interference in the impugned order is warranted by this Court.

9. I have heard the parties and perused the record before this Court. It is not in dispute that under Section 55 of the said Act, the decision of the Planning Authority (in the present case, the Respondent/MMRDA) on the question of what constitutes development of a temporary nature, is final and hence, it is not open to the Appellants to question the same before the Trial Court. For the sake of convenience, the said provision is reproduced hereunder:

“55. Removal or discontinuance of unauthorised temporary development summarily –

(1) Notwithstanding anything hereinbefore contained in this Chapter, where any person has carried out any development of a temporary nature unauthorisedly as indicated in sub-section (1) of section 52, the Planning Authority may by an order in writing direct that person to remove any structure or work erected, or discontinue the use of land made, unauthorisedly as aforesaid, within fifteen days of the receipt of the order; and if thereafter, the person does not comply with the order within the said period, the Planning Authority may request the District Magistrate or the Commissioner of Police, as the case may be, 5 [or authorise any of its officers or servants,] to have such work summarily removed or such use summarily discontinued without any notice as directed in the order; and any development unauthorisedly made again, shall be similarly removed or discontinued summarily without making any order as aforesaid.

(2) The decision of the Planning Authority on the question of what is development of a temporary nature shall be final.”

10. Hence, the only issue that was required to be considered by the Trial Court was whether the alleged unauthorized construction in the suit flats (enclosing of the balcony of the pergola like structure) situated on the 19th – 24th floors in the A-Wing of the Universal Garden building

was in accordance with the sanctioned/approved plans.

11. A perusal of the sanctioned building plans would reveals that the flower bed structure is located outside the suit flats and that the same is a pergola structure which is hollow. However, as on date, admittedly, the said balcony structure has been enclosed by using grills, glass, bricks, etc. Photographs that are placed on record clearly reveal this position. There is not and cannot be any dispute on this position, even from the flat owners since they contend that such construction was done by the Developer prior to handing over the said flats to them in/about 2014.
12. The Trial Court has correctly appreciated the documents placed before it and rendered a finding that the Appellants had failed to establish that the notice structure (unauthorized construction) is as per the sanctioned/approved plans. The Trial Court has also recorded that pursuant to the said notice issued by the Respondent/MMRDA, all the flat purchasers were given an opportunity to submit their response/s thereto, together with supporting documentary evidence, if any, which was not produced by them and hence, natural justice could not be said to be violated in not giving each flat purchaser an individual hearing. Even today, the Appellants have not been able to successfully

demonstrate the authenticity of the notice structure.

13. The Respondent/MMRDA had placed the Inspection Report on the record before the Trial Court which established that site inspection was carried out on 26th October 2023 prior to the issuance of the said notice under Section 55 of the said Act. As already recorded above, the existence of the notice structure is not denied by the flat purchasers/Appellants and under such circumstances, when the notice structure is visible from the public road, as can also be seen from the photographs filed before the Court, merely because each individual suit flat may not have been inspected prior to the issuance of the said notice, would not, as correctly held in the impugned order, vitiate and/or invalidate the Inspection Report which, coincidentally was produced and relied upon by the flat purchasers themselves.
14. Considering the above, the Trial Court has, in my view, correctly recorded and held that the Appellant has failed to make out the three-pronged test required to be satisfied by a party who approaches the Court and seeks interim reliefs, namely, prima facie case, balance of convenience and irreparable loss. The Trial Court has also considered the decision of this Court in *Abdul Rasheed Khan V/s. Brihanmumbai Mahanagar Palika*¹.

1 Appeal (L) no. 475/2018 in WP/1422/2008 decided on 24th October 2008.

15. Mr. Shah has not been able to point out any infirmity in the impugned order which would persuade any interference from this Court and accordingly, I am of the considered view that the impugned order has been correctly passed in the facts and circumstances of the case and does not warrant any interference.
16. Accordingly, the present Appeals are without any merit and are disposed of. All pending Interim Applications taken out in the present Appeals from Order, if any, also stand disposed of in terms of this order, and all interim orders passed therein, if any, also stand vacated.
17. After this order was dictated in open Court, the Appellants seek a stay of this order since they are desirous of testing the same in appeal. They further contend that notwithstanding the submissions of the Respondent/MMRDA to the contrary, the notice structures are capable of being regularized, and they inform this Court that they would prefer an application to that effect before the appropriate Competent Authority. If such application is preferred, the same shall be appropriately dealt with and disposed of by the Authority, in accordance with law, as expeditiously as possible, and in any event, within a period of 4 weeks from the date on which it is made. Considering the above, the present order is stayed for a period of 6

weeks from the date it is uploaded on the website of this Court.

Amol

(FARHAN P. DUBASH, J.)