

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

Amk

**APPEAL FROM ORDER (STAMP) NO. 9854 OF 2016
WITH
CIVIL APPLICATION (STAMP) NO. 9859 OF 2016
IN
APPEAL FROM ORDER (STAMP) NO. 9854 OF 2016**

Shri Mohammed Hussain Shaikh & ...Appellants
Anr.

Versus

The Municipal Corporation of ...Respondents
Greater Bombay & Anr.

**WITH
APPEAL FROM ORDER (STAMP) NO. 9863 OF 2016
WITH
CIVIL APPLICATION (STAMP) NO. 9865 OF 2016
IN
APPEAL FROM ORDER (STAMP) NO. 9863 OF 2016**

Shri Suresh Sunderdas Vaswani ...Appellant

Versus

The Municipal Corporation of ...Respondents
Greater Bombay & Anr.

**WITH
APPEAL FROM ORDER (STAMP) NO. 9867 OF 2016
WITH
CIVIL APPLICATION (STAMP) NO. 9868 OF 2016
IN
APPEAL FROM ORDER (STAMP) NO. 9867 OF 2016**

Shri Jayantilal Kanji Somaiya ...Appellant

Versus

The Municipal Corporation of
Greater Bombay & Anr.

...Respondents

WITH
APPEAL FROM ORDER (STAMP) NO. 9876 OF 2016
WITH
CIVIL APPLICATION (STAMP) NO. 9879 OF 2016
IN
APPEAL FROM ORDER (STAMP) NO. 9876 OF 2016

Shri Ratnakar B. Hegade & Anr.

...Appellants

Versus

The Municipal Corporation of
Greater Bombay & Anr.

...Respondents

WITH
APPEAL FROM ORDER (STAMP) NO. 9881 OF 2016
WITH
CIVIL APPLICATION (STAMP) NO. 9883 OF 2016
IN
APPEAL FROM ORDER (STAMP) NO. 9881 OF 2016

Smt. Urmila Sushil Kumar Thukral

...Appellant

Versus

The Municipal Corporation of
Greater Bombay & Anr.

...Respondents

WITH
APPEAL FROM ORDER (STAMP) NO. 9884 OF 2016
WITH
CIVIL APPLICATION (STAMP) NO. 9885 OF 2016
IN

APPEAL FROM ORDER (STAMP) NO. 9884 OF 2016

Shri Kailash Meher Singh Kher ...Appellant

Versus

The Municipal Corporation of ...Respondents
Greater Bombay & Anr.

**WITH
APPEAL FROM ORDER (STAMP) NO. 9899 OF 2016
WITH
CIVIL APPLICATION (STAMP) NO. 9901 OF 2016
IN
APPEAL FROM ORDER (STAMP) NO. 9899 OF 2016**

Shri Ketankumar Purshottamdas ...Appellant
Patel

Versus

The Municipal Corporation of ...Respondents
Greater Bombay & Anr.

**WITH
APPEAL FROM ORDER (STAMP) NO. 9906 OF 2016
WITH
CIVIL APPLICATION (STAMP) NO. 9907 OF 2016
IN
APPEAL FROM ORDER (STAMP) NO. 9907 OF 2016**

Mrs. Neha Sunil Aggarwal ...Appellant

Versus

The Municipal Corporation of ...Respondents
Greater Bombay & Anr.

WITH
APPEAL FROM ORDER (STAMP) NO. 9908 OF 2016
WITH
CIVIL APPLICATION (STAMP) NO. 9909 OF 2016
IN
APPEAL FROM ORDER (STAMP) NO. 9908 OF 2016

Mrs. Lalita Madhukar Sadashiv
Patankar

...Appellant

Versus

The Municipal Corporation of
Greater Bombay & Anr.

...Respondents

.....

Mr. K. P. Tiwari for the Appellants.

Mr. Vaibhav M. Parshurame for Respondent No.2.

Mr. S. K. Sonawane for Respondent No.1-BMC.

CORAM : G. S. KULKARNI, J.

DATE : 5th MAY, 2016.

P. C. :

1. Heard Mr. Tiwari, learned counsel for the appellant, Mr. Parshurame, learned counsel for the respondent-MHADA and Mr. Sonawane, learned counsel for the Municipal Corporation.

2. This batch of appeals arise from an ad interim order dated 18.02.2016 passed by the learned Judge, City Civil Court at Bombay (Borivali Division) Dindoshi (Goregaon), Mumbai in draft Notices of Motion in the L. C. Suits filed before the City Civil Court at Mumbai whereby the learned Judge has refused ad interim reliefs as prayed

for by the appellants in the draft Notices of Motion as filed by them.

3. By the draft Notices of Motion the appellants/plaintiffs had sought relief of temporary injunction against the respondent from taking any coercive action in regard to the suit structures belonging to the appellants in pursuance of Section 351 notices issued by the Designated Officer-III, Asstt. Engineer, (B & F) 'K/West Ward' of the Municipal Corporation.

4. Mr. Tiwari, learned counsel for the appellants in all these appeals submits that the learned Trial Judge in refusing the ad interim relief was in error in as much as an order passed by this Court in a batch of 'Appeals from Orders' being an order dated 14.12.2012 (Appeal from Order No. 573/2012 etc.) though was expressly pointed out as also pleaded in the plaint in paras 15, 16 & 19 of the plaint has been completely overlooked by the learned Trial Judge in passing the impugned order refusing a temporary injunction in respect of suit structure. The order of this Court pertains to an earlier round of litigation between these appellants and respondents. It is submitted that in the order dated 14.12.2012 passed by this Court a statement as made on behalf of the MHADA was recorded that after all permissions, approvals are obtained and formalities are completed the statutory authority will issue a notice in the requisite form to the

appellants and give them minimum four weeks time from the date of the receipt of the notice, to vacate and hand over vacant and peaceful possession of their existing premises. This statement was accepted by this Court. It is submitted that in pursuance of this statement as made on behalf of the MHADA these appellants who were parties to those proceedings had made a statement that they would give an undertaking to hand over the vacant and peaceful possession of their premises. It is submitted that this was the arrangement which was in vogue and not modified and was valid on the date when the learned Trial Judge passed the impugned order and if that be so then surely Mumbai Municipal Corporation could not have resorted to take any action of issuing any fresh Section 351 notice in that regard.

5. On the other hand, Mr. Parshurame, learned counsel appearing for the MHADA and Mr. Sonawane, learned counsel appearing for the Municipal Corporation would submit that the structures are unauthorized and, therefore, an action under Section 351 was required to be initiated. However both the learned counsel for these authorities are unable to satisfy the Court as to how the circumstances have changed and these cases would not be covered by the statement which is made and recorded in para 5 of the order dated 14.12.2012 passed by this Court in the earlier batch of appeals.

6. Be that as it may, it is quite clear that the action on behalf of the Municipal Corporation issuing notice under Section 351 of the Mumbai Municipal Corporation Act is the subject matter of challenge in the suits in question which are instituted by the appellants. All these appellants had earlier approached the City Civil Court in earlier/independent suits where similar action on the part of the Municipal Corporation in issuing notice under Section 351 of the MMC Act was challenged. Against refusal of the ad interim reliefs in those suits, these very appellants had approached this Court in a batch of Appeals from Order as noted above. This Court by an order dated 14.12.2012 in disposing of those appeals had recorded the following statement as made on behalf of the MHADA which reads thus:

5. *Mr. Lad, on taking instructions makes a statement that after all permissions, approvals are obtained and formalities are completed statutory authorities will issue a notice in the requisite form to the appellants and give them minimum four weeks time from the date of receipt of the notice to vacate and hand over vacant and peaceful possession of their existing premises.*

6. *Statement made by Shri Lad, on instructions, is accepted as undertaking to this Court, equally, Mr. Tiwari, appearing on behalf of each of these appellants, on instructions, states that the appellants will in compliance with this notice and without questioning it hand over vacant and peaceful possession of their existing premises, in the time stipulated from the date of receipt of the said notice but that will be without prejudice to the rights and contentions to claim the area as stated in the Plaints. This*

statement also made on instructions by Tiwari is accepted as undertaking to this Court.

7. Admittedly there is nothing placed on record on behalf of the MHADA at this stage of proceedings either before the Trial Court or this Court that all permissions, approvals are obtained and formalities are completed by the statutory authorities, so that fresh notices could be issued calling upon the appellants to vacate their premises or to justify taking any action for demolition of these premises.

8. Prima facie it appears that the statement as made before the Court on behalf of the MHADA as recorded by this Court in the order dated 14.12.2012 (supra) would continue to operate. If the statement is not in operation or the same is in any manner diluted or the MHADA in some manner is discharged from this statement in some further proceeding, then it is for the MHADA to point out that the impugned action can be resorted to by the Municipal Corporation at the instance of MHADA by issuing Section 351 notices as impugned in the present suit. All these issues are required to be gone into by the Trial Court at the hearing of the Notices of Motion. A perusal of the impugned order however clearly indicates that though the appellants

have made submissions and asserted his position before the Trial Court by making averments in the plaint and also by pointing orders of this Court dated 14.12.2012 (supra) the learned Judge has completely overlooked the binding statement as made on behalf of the MHADA which was a precondition for any future action is to be taken by the authorities.

9. In view of the above observations it would be appropriate that the Notices of Motion are heard finally by the Trial Court, the respondents are at liberty to file their respective replies to the Notices of Motion within a period of 6 weeks from today so as to justify action being taken against the suit structures as concerned in the present appeals. The plaintiffs shall file rejoinder, if any, within a period of two weeks thereafter. After the pleadings are complete, the parties are at liberty to request the learned Trial Judge to take up the hearing of the Notices of Motion.

10. Needless to observe that the learned Judge shall decide the Notices of Motion without being influenced by the observation made in the impugned ad interim order.

11. In the meantime till the Notices of Motions are decided, the respondent authorities are directed not to take any coercive action in respect of the suit structures. Further it may be observed

that the learned Trial Judge shall take into consideration the effect of the orders dated 14.12.2012 passed by this Court in the batch of appeals (Appeal from Order No. 573/2012 etc.) (supra) and more particularly the statement recorded in para 5 of the said order as noted above. All contentions of the parties to be raised in that regard and on merits of the matter are expressly kept open.

12. All these Appeals are accordingly disposed of in the above terms. No order as to costs.

13. The Civil Applications do not survive and are accordingly disposed of .

14. Parties to act on the authenticated copy of this order.

(G. S. KULKARNI, J.)