

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

**APPEAL FROM ORDER STAMP NO. 9904 OF 2016
WITH
CIVIL APPLICATION STAMP NO.9905 OF 2016**

Govind Parmanand Nihalani : Appellant/Applicant
Versus
The Municipal Corporation For
Greater Bombay And Anr : Respondents

**ALONG WITH
APPEAL FROM ORDER STAMP NO. 9850 OF 2016
WITH
CIVIL APPLICATION STAMP NO.9852 OF 2016**

Shri Vadiraj Sethu Sabaji : Appellant/Applicant
Versus
The Municipal Corporation For
Greater Bombay And Anr : Respondents

**ALONGWITH
APPEAL FROM ORDER STAMP NO. 9861 OF 2016
WITH
CIVIL APPLICATION STAMP NO.9862 OF 2016**

Deepak Washerwarnath Sareen : Appellant/Applicant
Versus
The Municipal Corporation For
Greater Bombay And Anr : Respondents

**ALONGWITH
APPEAL FROM ORDER STAMP NO. 9896 OF 2016
WITH
CIVIL APPLICATION STAMP NO.9897 OF 2016**

Cecilia Henry Fernandes : Appellant/Applicant
Versus
The Municipal Corporation For
Greater Bombay And Anr : Respondents

ALONG WITH

**APPEAL FROM ORDER STAMP NO. 10067 OF 2016
WITH
CIVIL APPLICATION STAMP NO.10069 OF 2016**

Shri Javed Jaafri And Anr : Appellants/Applicants
Versus
The Municipal Corporation
For Greater Bombay : Respondent

**ALONGWITH
APPEAL FROM ORDER STAMP NO. 12766 OF 2016
WITH
CIVIL APPLICATION STAMP NO.12768 OF 2016**

Ms. Champavanti Wd/o Nandkishore Khanna : Appellant/Applicant
Versus
The Municipal Corporation
For Greater Bombay : Respondent

**ALONGWITH
APPEAL FROM ORDER STAMP NO. 13078 OF 2016
WITH
CIVIL APPLICATION STAMP NO.13081 OF 2016**

Zafar Hussain Rizvi : Appellant/Applicant
Versus
The Municipal Corporation
For Greater Bombay And Anr : Respondents

Mr. K P Tiwari i/by K P Tiwari & Co. for the Appellants/Applicants.
Mr. S K Sonawane for the Respondent No.1.
Mr. V M Parshurami for the Respondent No.2.

CORAM : R. M. SAVANT, J.
DATE : 30th June 2016

P.C.

1 The above Appeals from Order involve a challenge to the identical
orders all dated 18/02/2016 passed by the learned Judge of the City Civil

Court, (Borivali Division), Dindoshi, Mumbai by which order the ad-interim relief has been refused to the Appellants/original Plaintiffs. The said orders have been passed in the Draft Notices of Motion filed by the Appellants/Plaintiffs.

2 The Appellants/Plaintiffs have filed the suits in question in the City Civil Court at Dindoshi (Borivali Division), Goregaon, Mumbai for a declaration that the notices dated 10/07/2012 issued under Section 351 of the Mumbai Municipal Corporation Act (“MMC Act” for short), and the orders passed thereon dated 05/12/2015 by the Designated Officer-III, Asstt. Engineer (B & F) K/West Ward are illegal, ineffective, malafide, bad in law, void and not binding on the Plaintiffs and therefore the Defendants have no right title or authority in law or otherwise of whatsoever nature to interfere with and/or initiate any action in respect of the suit premises and or any part/portion thereof. The Plaintiffs have also sought relief of injunction that the Defendants, their officers, sub-ordinates, representatives, servants, agents, contractors, workmen and or person or persons claiming through them or under them be permanently restrained by an order of injunction of the said Court from in any manner demolishing, removing, pulling down and/or in any manner interfering with and or initiating any action in respect of the suit premises and or any part/portion thereof.

3 In the suits in question, the Plaintiffs have filed Notices of Motion wherein they have prayed for injunction restraining the Defendants from acting upon the said Notices issued under Section 351 of the MMC Act and the orders passed thereon.

4 At this stage it would be relevant to refer to the order dated 14/12/2012 passed in Appeal from Order No.573 of 2012 and 8 companion Appeals from Order. The said order pertains to an earlier round involving the persons similarly situated as the Appellants herein who were also issued Notices under Section 351 of the MMC Act. It is required to be noted that the Noticees are all having their structures in a settlement of MHADA known as Aram Nagar, at Versova, Andheri (West), Mumbai. It seems that a scheme for redevelopment of the said Aram Nagar has been propounded. In the said order dated 14/12/2012 the statement made on behalf of the MHADA and the commitment made by the occupants of the structures have been recorded in paragraphs 5 and 6 of the said order which for the sake of ready reference is reproduced herein under :-

“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.”

5 Against the rejection of the ad-interim relief apart from the above
7 Appeals from Order, there were 9 other Appeals from Order which were
listed on 05/05/2016 before a learned Single Judge of this Court. In the said 9
Appeals from Order the contentions raised on behalf of the MHADA as well as
on behalf of the Municipal Corporation of Greater Mumbai (“MCGM” for short)
that the structures are unauthorized and, therefore, an action under Section
351 was required to be initiated were raised. However, a learned Single Judge
of this Court who was hearing the said 9 Appeals from Order has observed to
the following effect :-

“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.”

Thereafter the learned Single Judge has observed in paragraph 7 of the order dated 05/05/2016 that 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. The learned Single Judge of this Court thereafter in paragraph 8 of the said order dated 05/05/2016 has observed 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 would continue to operate. The learned Single Judge has further observed that 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 by the Municipal Corporation at the instance of MHADA by issuing Section 351 notices as impugned in the present suit. The learned Single Judge has further observed that all these issues are required to be gone into by the Trial Court at the hearing of the Notices of Motion. The learned Single Judge has lastly observed that though the reliance was sought to be placed on the order dated 14.12.2012, the learned Judge of the Trial Court has completely overlooked the binding statement made on behalf of the MHADA which was a precondition for any future action to be taken by the authorities. In paragraph 9 of the said order dated 05/05/2016 the learned Single Judge lastly directed that the Notices of Motion which are pending are heard finally by the Trial Court and granted liberty to the Respondents i.e. the MHADA and the MCGM to file their respective replies to the Notices of Motion within a period of 6 weeks and

directed that 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.

6 Though the 9 Appeals from Order were disposed of by the said order dated 05/05/2016, the above mentioned 7 Appeals from Order remained to be disposed of on the said day i.e. on 05/05/2016.

7 The learned counsel for the Appellants/Applicants sought to rely upon the said order dated 05/05/2016 passed by a learned Single Judge of this Court in Appeal from Order Stamp No.9854 of 2016 and companion 8 Appeals from Order. It was the submission of the learned counsel for the Appellants/Applicants Shri Tiwari that the present Appellants/Applicants in the above Appeals from Order are on par with the Appellants in the said 9 Appeals from Order in respect of whom the order dated 05/05/2016 has been passed and would therefore be governed by the said order.

8 The said submission of the learned counsel for the Appellants/Applicants Shri Tiwari was sought to be controverted by the learned counsel for the Respondent No.1 MCGM Shri Sonawane by contending that the order dated 14/12/2012 was passed in Appeals from Order filed by the said 9 Appellants and therefore the order dated 05/05/2016 passed by the learned Single Judge of this Court Shri G S Kulkarni, J. would not apply to the

above 7 Appeals from Order. However, the learned counsel appearing on behalf of the Respondent No.1 MCGM except contending that the above Appellants were not the Appellants in the said 9 Appeals from Order covered by the order dated 14/12/2012 could not distinguish the cases on facts.

9 As indicated above, the present 7 Appellants and the said 9 Appellants in whose Appeals from Order the order dated 05/05/2016 has been passed are at par in so far as the factual position is concerned. As indicated above the present 7 Appellants have also their structures in Aram Nagar where a scheme for redevelopment has been propounded. The Appellants have also been issued the Notices under Section 351 of the MMC Act as the said 9 Appellants were in respect of whom the order dated 05/05/2016 has been passed. As indicated above, all the 16 Appellants have filed suits in the City Civil Court, Greater Bombay challenging the Notices issued under Section 351 of the MMC Act and the orders passed thereon. In so far as the paragraphs 5 and 6 of the order dated 14/12/2012 are concerned, the said paragraphs would equally apply to the present Appellants in the above Appeals from Order as they are covered by the redevelopment scheme propounded for the said Aram Nagar. Hence the machinery provided vide paragraphs 5 and 6 of the said order dated 14/12/2012 would also equally apply to the present Appellants in the above Appeals from Order.

10 In my view, therefore, the above Appeals from Order would also be covered by the order dated 05/05/2016. Hence similar directions as contained in the order dated 05/05/2016 would have to be issued. The Respondents are accordingly directed to file their respective replies to the Notices of Motion filed by the above Appellants within a period of 6 weeks from date. The Trial Court is directed to hear and decide the Notices of Motion in question expeditiously after the pleadings are complete. The above Appeals from Order are accordingly disposed of. In view of the disposal of the above Appeals from Order, the above Civil Applications do not survive and the same to accordingly stand disposed of as such.

[R.M.SAVANT, J]