

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

APPEAL FROM ORDER NO.493 OF 2016

ALONGWITH

CIVIL APPLICATION NO.640 OF 2016

IN

APPEAL FROM ORDER NO.493 OF 2016

St. Thomas High School,

S. N. Dubey Rawalpada, Dahisar (East),

Mumbai-400 068

.. Appellant

Versus

Municipal Corporation of Greater Mumbai

and others

.. Respondents

Mr. Y. S. Jahagirdar, Senior Advocate a/w Mr. Shailesh Shukla, Mr. Pratik Pawar, Mr. Shahan Pradhan, Ms. Shanaya Cyrus Irani i/by J. Sagar Associates for the Appellant.

Mr. A. Y. Sakhare, Senior Advocate a/w Mr. Joel Carlos, Mr. S. Sonawane, Mrs. M. R. Bhoir for the Respondent BMC.

CORAM : R.M. SAVANT, J.

DATE : 8th JUNE 2016

PC.

1. The order dated 28.04.2016 passed by the Learned Judge of the City Civil Court, Borivali Division, Dindoshi, Mumbai, by which order, the Learned Judge has refused to grant ad-interim reliefs in the draft Notice of Motion filed by the Appellant/original Plaintiff in the suit filed by it being LC Suit No.1164 of 2016 is taken exception to by way of the

above Appeal from Order.

2. The Appellant/original Plaintiff was served with a notice dated 21.04.2016 under Section 351 of the Mumbai Municipal Corporation Act, 1988 (For short “MMC Act”). The Plaintiff was thereafter served with notice under Section 488 of the MMC Act calling upon it to remove the structure. The said notice issued under Section 351 of the MMC Act alleged that the structure of the Appellant was unauthorised. In the said suit, the Plaintiff laid a challenge to the legality of the notice dated 21.04.2016 issued under Section 351 of the said Act as also notice dated 09.03.2016 issued under Section 488 of the MMC Act. In the said suit, the Plaintiff filed Notice of Motion seeking reliefs against the Municipal Corporation of Greater Mumbai (“MCGM” for short) i.e. Respondents herein from demolishing the building which was in terms of the notice unauthorised as being constructed without any permission. The Plaintiff is running a school in the notice structure. The said structure is in the form of alphabet “C” with open ground in the middle. It appears that the said structure was abutting a “Nallah” and pursuant to the said notice, MCGM has substantially demolished that part of the structure which was abutting the “Nallah” in the demolition which was carried on 22.04.2016 and 25.04.2016. The Plaintiff in fact apprehending demolition had been moved the Notice of Motion for grant of ad-interim reliefs. The Learned

Judge of the City Civil Court considered the said application for ad-interim reliefs and adverted to the fact that a substantial portion of the said structure was already demolished and that the remaining structure had become dangerous for habitation, recorded so in the impugned order. The Learned Judge has also recorded that the action of the MCGM was warranted in view of the fact that the structure in question was unauthorised being constructed without any permission. The Learned Judge accordingly had refused to grant any ad-interim reliefs. The above Appeal from Order has been filed against the said order dated 28.04.2016 refusing ad-interim reliefs to the Appellant/original Plaintiff.

3. The above Appeal from Order had come up for admission before a Learned Single Judge of this Court on 05.05.2016 on which day a detailed order was passed by the Learned Judge, wherein the factum that the Learned Senior Counsel Mr. Y. S. Jahagirdar appearing on behalf of the Appellant does not dispute the illegality of the structure was recorded. The Learned Judge thereafter has recorded the contention raised on behalf of the Appellant that in respect of the structure which is remaining on site, a report as regards its structural stability could be called from a Structural Engineer on the panel of this Court. In so far as the occupation of the remainder of the structure is concerned, the Learned Judge has observed in paragraph 16 that the occupation of the said building for the purpose of

conducting the office etc. as submitted on behalf of the Plaintiff/Appellant would be at the sole risk and responsibility of the Appellant and that in the event of any unfortunate incident of a collapse, the Appellant would not hold responsible/liable either the Municipal Corporation or its officers or any other government authority. Implicit in the said observation is the fact that the Learned Judge did not deem the building which is now remaining on the site in question as fit for occupation. In terms of the liberty granted by the said order dated 05.05.2016, the Appellant has obtained the report of the Structural Engineer Shri. Girish Wadhwa, whereas the MCGM has submitted the report of one Structwel Designers & Consultants Pvt. Ltd. which is a firm of Structural Engineers of which one Shri. Kaustubh R. Raikar is the Executive Director.

4. A reading of the report submitted by Shri. Girish Wadhwa discloses that the structure which is now on site and especially the classrooms require repairs and it has been observed that no eviction is required, but only minor repairs. The conclusions of Shri. Girish Wadhwa which are appearing at page 7 of his report are reproduced hereinunder for the sake of ready reference :-

“The building is safe to be occupied. The repairs as specified in 3a and 3b shall be taken up on priority. Repairs specified in 4a and 4b shall be only carried out if building is not demolished by 2 years from June 2016.”

5. In so far as the report of Structwel Designers & Consultants Pvt. Ltd. are concerned, conclusions are appearing at page 8 and are reproduced hereinunder for the sake of ready reference :-

“In view of above, it may be concluded that the structure is un-engineered structure, wherein it appears that the structure may have been erected on need basis without any proper design.

Distresses in walls like cracks have been noted; however the structural deficiencies noted are of concern especially the structure being a school building.

The deflection noted may be original construction defects wherein an additional frame has been provided keeping in view the safety aspects, however the structural members provided for support of the slab seems to be inadequate considering size of the room and load imposed.

Overall the structure is not fit for occupancy.”

6. Hence, though the report of Shri. Girish Wadhwa states that some repairs are required for making the structure fit for occupation, the report of the Structwel Designers & Consultants Pvt. Ltd. unequivocally states that the overall structure is not fit for occupancy.

7. The Learned Senior Counsel appearing on behalf of the Appellant was at pains to persuade this Court that the appellant be permitted to carry out the repairs as advised by the report of Shri. Girish Wadhwa and thereafter the MCGM which is the planning authority be directed to take a decision as to whether the Appellant can be permitted to

occupy the structure which is remaining on the site in question and run the school therein.

8. The said suggestion of the Learned Senior Counsel for the Appellant was opposed to by the Learned Senior Counsel appearing for the MCGM. It was the submission of the Learned Senior Counsel appearing for the MCGM that the said course of action cannot be permitted considering the fact that there is no dispute that the structure is an unauthorised one and which fact has in terms been accepted by the Appellant during the course of the hearing which took place on 22.05.2016.

9. This Court was also concerned with the fact that in the structure a school was being run and as claimed by the Appellant as many as 3100 students were pursuing education in the said school. However, the said aspect would have to be considered in the light of the fact that the structure or the building wherein the school is being run is totally unauthorised. Therefore in the guise of continuing the school in the interest of students the imprimatur of this Court cannot be given to a structure which is unauthorised, albeit even for a temporary period. The safety of the students who would be taking education in the school especially in the background of the fact that the MCGM has found the structure to be inhabitable is a matter of serious concern. This Court

obviously cannot put the lives of the students in jeopardy and make them susceptible to an untoward incident in view of the fact that the structure that is now standing is inhabitable as per the report submitted by the MCGM.

10. In my view, therefore, the order passed by the Trial Court refusing ad-interim reliefs cannot be found fault with. It is for the Appellant/Plaintiff to make appropriate alternate arrangements for the school till it puts up the new building pursuant to the permission which it had obtained from the MCGM almost three years back. The Appeal from Order is accordingly dismissed.

11. In view of the dismissal of the Appeal from Order, the Civil Application to accordingly stand disposed of.

12. The order dated 05.05.2016 in the matter of permitting the Appellant to use the structure for office purposes only subject to the terms and conditions mentioned in the said order would continue to operate for a period of four weeks. It is clarified that except the use of the same for office, no other user is permissible. The MCGM not to take coercive action for a period of four weeks.

[R.M. SAVANT, J]