

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

**APPEAL FROM ORDER STAMP NO.16320 OF 2016
ALONGWITH
CIVIL APPLICATION STAMP NO.16321 OF 2016**

Smt. Kantaben Raghavbhai Rathod	.. Appellant/Applicant
Versus	
Assistant Municipal Commissioner	.. Respondent

**ALONGWITH
APPEAL FROM ORDER STAMP NO.16313 OF 2016
ALONGWITH
CIVIL APPLICATION STAMP NO.16315 OF 2016**

Mrs. Shilpa Mayank Tiwari	.. Appellant/Applicant
Versus	
Assistant Municipal Commissioner	.. Respondent

**ALONGWITH
APPEAL FROM ORDER STAMP NO.16318 OF 2016
ALONGWITH
CIVIL APPLICATION STAMP NO.16319 OF 2016**

Shri. Amarshi Javerbhai Patel	.. Appellant/Applicant
Versus	
Assistant Municipal Commissioner	.. Respondent

**ALONGWITH
APPEAL FROM ORDER STAMP NO.16324 OF 2016**

ALONGWITH
CIVIL APPLICATION STAMP NO.16325 OF 2016

Smt. Pooja Pramod Patil	.. Appellant/Applicant
Versus	
Assistant Municipal Commissioner	.. Respondent

ALONGWITH
APPEAL FROM ORDER STAMP NO.16328 OF 2016
ALONGWITH
CIVIL APPLICATION STAMP NO.16331 OF 2016

Smt. Jagruti Himmatbhai Rathod	.. Appellant/Applicant
Versus	
Assistant Municipal Commissioner	.. Respondent

ALONGWITH
APPEAL FROM ORDER STAMP NO.16333 OF 2016
ALONGWITH
CIVIL APPLICATION STAMP NO.16334 OF 2016

Smt. Vasanti Vasant Thali	.. Appellant/Applicant
Versus	
Assistant Municipal Commissioner	.. Respondent

ALONGWITH
APPEAL FROM ORDER STAMP NO.16338 OF 2016
ALONGWITH
CIVIL APPLICATION STAMP NO.16340 OF 2016

Mr. Fedrick Lobo .. Appellant/Applicant

Versus

Assistant Municipal Commissioner .. Respondent

ALONGWITH

APPEAL FROM ORDER STAMP NO.16341 OF 2016

ALONGWITH

CIVIL APPLICATION STAMP NO.16342 OF 2016

Mrs. Anita Sherbahadur Pasi .. Appellant/Applicant

Versus

Assistant Municipal Commissioner .. Respondent

ALONGWITH

APPEAL FROM ORDER STAMP NO.17357 OF 2016

ALONGWITH

CIVIL APPLICATION STAMP NO.17358 OF 2016

Shri. Gangaram Yallanna Kartarpak .. Appellant/Applicant

Versus

Assistant Municipal Commissioner .. Respondent

Mr. Rajesh Kanojia i/by Res Juris for the Appellant/Applicant.

Mrs. Madhuri More a/w Mrs. M. R. Bhoir for the Respondent BMC.

Mr. Rahul Nikam, Junior Engineer (B & F), R/North Ward present.

CORAM : R.M. SAVANT, J.

DATE : 10th AUGUST 2016

PC.

1 The above First Appeals take exception to the orders dated 25.05.2016 and 06.06.2016 passed in the Draft Notices of Motion filed by the Appellants/original Plaintiffs by the Learned Judge of the City Civil Court, Borivali Division, Dindoshi, Mumbai. The said orders are reproduced hereinunder for ready reference :-

Order dated 25.05.2016

“Adv Kanojia for plff. Present. Adv Botlawar for deft/MMC. Rahul Nikam Jr. Engineer R North Ward present. Adv for plff tendered draft n/m and sought leave to register the same. Leave granted. Read. Heard both the sides. Admittedly partial demolition of some of suit structures have taken place. Under such circumstance it is not desirable to grant any interim relief in terms of prayer clause as n/m needs to be decided on merits hence matter is placed before regular Court. Adj'd to 06/06/16”

Order dated 06.06.2016

“Advocate Rajesh Kanojia i/b M/s. Res Juris for plaintiff present. Advocate Mrs. Smita Basudkar for defendant/MMC present. The advocate for plaintiff is contending that the matter may be heard for ad-interim relief. Whereas on the last date, the Court has very specifically observed in his order that it is not desirable to grant any interim relief in terms of prayer clause as N/M needs to be decided on merits. Hence, I think it is as good as refusal of ad-interim relief hence, the matter is adjourned for N/M reply to 27/6/2016. C.C. is expedited.”

2 The cause for moving the draft Notices of Motion by the Plaintiffs was on the ground that partial demolition had taken place in respect of the structures of some of the Plaintiffs and apprehending further

demolition that the Learned Judge of the City Civil Court was moved. In so far as the first order dated 25.05.2016 is concerned, the Learned Judge who passed the order was the in-charge judge for the said day, he has recorded in the said order that it would not be desirable to grant any interim reliefs in terms of prayer clause of the Notice of Motion in view of the fact that partial demolition had taken place. He further directed that the matter be placed before the regular Court on 06.06.2016.

3 The matter thereafter appeared before the regular Court on 06.06.2016. On which day, the regular Court observed that since it has already been observed in the order dated 25.05.2016, it would not be desirable to grant interim reliefs in terms of the prayer clause in the Notice of Motion and that the same amounts to, as good as refusal of the ad-interim reliefs. The matters were thereafter adjourned to 27.06.2016.

4 In the above First Appeals also the MCGM has filed an affidavit indicating that except room Nos.5, 7 and 8 demolition has taken place of the other rooms. A dispute is sought to be raised by the Learned Counsel for the Appellants as regards the extent of the demolition. It was the contention of the Learned Counsel that in respect of some rooms the demolition though carried out, the rooms are still habitable. However, the Learned Counsel admits that in respect of five rooms, there is substantial

demolition which has been taken place, whereas eight rooms are in tact. The contrary is the case in so far as the Learned Counsel for the MCGM is concerned, who on instructions of the Junior Engineer personally present in Court states that except four rooms all other rooms have been demolished. Since ad-interim reliefs have been refused to the Appellants/original Plaintiffs that they have approached this Court by way of the above Appeals from Order. In my view, since the Notices of Motion filed by the Appellants/original Plaintiffs are as yet pending, it would be just and proper to dispose of the above Appeals from Order by the following order :-

I) The MCGM is directed file its affidavit in reply/replies in the Notices of Motion filed by the Plaintiffs within four weeks from date.

II) Rejoinder if any to be filed within two weeks thereafter.

III) The Trial Court to hear and decide the Notices of Motion latest by 20.10.2016.

IV) In view of the demolition being already carried out, status-quo in respect of the structures would be maintained

both by the Plaintiffs as well as the MCGM till the Notices of Motion are decided by the Trial Court. It is made clear that in respect of the portions which are demolished, the Plaintiffs would not be entitled to re-erect them.

5 Needless to state that on merits the contentions of the parties are kept open for being urged before the Trial Court. The Notices of Motion would be decided on their own merits and in accordance with law.

6 In view of the disposal of the Appeals from Order, the Civil Applications do not survive and to accordingly stand disposed of as such.

[R.M. SAVANT, J]