

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST.) NO. 21446 OF 2016

Bosco Basil Martis ...Appellant

Versus

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

WITH

APPEAL FROM ORDER (ST.) NO. 21456 OF 2016

Keshav Soma Uchil ...Appellant

Versus

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

WITH

APPEAL FROM ORDER (ST.) NO. 21464 OF 2016

Mr. Rimmi Tuli ...Appellant

Versus

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

WITH

APPEAL FROM ORDER (ST.) NO. 21470 OF 2016

Smt. Parvati Devi Agarwal ...Appellant

Versus

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

WITH

APPEAL FROM ORDER (ST.) NO. 21473 OF 2016

Vikhyaat Deepak Sareen

...Appellant

Versus

The Municipal Corporation for Greater
Bombay & Anr.

...Respondents

Mr. K.P. Tiwari, i/b K.P. Tiwari & Co., for the Appellant.

Mrs. M.R. Bhoir, a/w Mr. S.K. Sonawane, for Respondent/BMC.

Mr. A. Davar, i/b Ms. S. Crasto, for Proposed Intervenor.

CORAM : R.M. SAVANT, J.

DATE : 5th August 2016

PC. :

1. The above Appeals from Order take exception to the identical orders all dated 22nd July 2016. By the said orders, the Application for ad-interim reliefs filed by the Plaintiffs i.e. the Appellants in each of the above Appeals came to be rejected.

2. The Appellants have their structures in the settlement of the MHADA known as Aaram Nagar, Versova, Andheri West, the Appellants as indicated above are the original Plaintiffs, who have been issued notices under Section 351 of the Mumbai Municipal

Corporation Act, 1888 (“**M.M.C. Act**” for short) by the Assistant Engineer (B & F) K West Ward of the Municipal Corporation of Greater Bombay (“**M.C.G.M.**” for short) alleging unauthorised construction being put up by the Appellants to the extent mentioned in the said Notices. The case of the above Appellants is on par with the case of the Appellants in Appeal from Order (St.) No. 9854 of 2016 and 7 companion matters which Appeals came to be disposed of by a learned Single Judge of this Court (Shri. G.S. Kulkarni, J.) by the order dated 5th May 2016 as also the Appeals are on par with the Appellants in Appeal from Order No. 9904 of 2016 and six companion Appeals which were disposed of by this Court (R.M. Savant, J) by the order dated 30th June 2016. The case of the Appellants would therefore, be covered by the said orders that is the order dated 5th May 2016 and the order dated 30th June 2016. In the order dated 30th June 2016 passed by this Court i.e. R.M. Savant, J. reference is made to the order dated 5th May 2016. The relevant excerpts i.e. paragraphs 9 and 10 of the said order dated 30th June 2016 for the purposes of the present Appeals are reproduced hereinunder for the sake of ready reference :-

“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.”*

3. The above Appeals are accordingly, disposed of in terms of the directions as contained in the said paragraphs 9 and 10. In terms of the said directions no coercive steps would be taken by the M.C.G.M. which would be on the basis of the same terms as contained in the said order dated 5th May 2016.

4. Though by the said order dated 30th June 2016 the

Respondents amongst whom is the M.C.G.M. who is the main contesting Respondent being the authority who has issued the notices under Section 351 of the M.M.C. Act was directed to file Affidavit in Reply within six weeks. This Court is informed that as yet no reply has been filed by the M.C.G.M. though a period of five weeks has already expired. The said fact is symptomatic of the state of affairs insofar as the filing of the Reply by the M.C.G.M. is concerned. The above Appeals were sought to be dealt with on the basis of some peripheral submissions rather than of any substance especially in the context of the said orders dated 5th May 2016 and 30th June 2016. Since about 22 Notices of Motion would now be pending which would include the Motions filed by the present Appellants/Plaintiffs. It is expected of the M.C.G.M. that it acts with reasonable despatch having regard to the nature of the controversy involved. However, unfortunately the contrary is the situation. This Court has already by the said order dated 30th June 2016 has expedited the hearing of the Notices of Motion. However, the said order would be of no avail unless the Affidavit/Affidavits are filed by the M.C.G.M. The learned Counsel appearing on behalf of the M.C.G.M. Shri. S.K. Sonawane who is also the Deputy Law Officer of the M.C.G.M. assures the Court that the Affidavit/Affidavits in Reply in the Notices of Motion would

be filed within five weeks from date i.e. on or before 9th September 2016.

5. The Trial Court may thereafter, proceed with the Notices of Motion and dispose them of expeditiously.

6. All the above Appeals from Order to accordingly stand disposed of.

7. All the above Civil Applications to also stand disposed of.

[R.M. SAVANT, J.]