

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

**APPEAL FROM ORDER STAMP NO.21979 OF 2016
ALONGWITH
CIVIL APPLICATION STAMP NO.21982 OF 2016**

Shailesh Jethalal Chheda

.. Appellant

Versus

Municipal Corporation for Greater Mumbai

.. Respondent

Mr. Y. K. Tiwari i/by K. P. Tiwari & Co. for the Appellant.

Mrs. Madhuri More for the Respondent BMC.

CORAM : R.M. SAVANT, J.

DATE : 10th AUGUST 2016

PC.

1 The above Appeal from Order takes exception to the order dated 25.07.2016 passed by the Learned Judge of the City Civil Court, Borivali Division, Dindoshi, Mumbai, by which order, the application for ad-interim relief moved by the Appellant/original Plaintiff came to be rejected. The Appellant has his structure in the settlement of the MHADA known as Aram Nagar, Versova, Andheri (West), Mumbai-400 061. The Appellant as indicated above is the original Plaintiff who has been issued a notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 ("MMC Act" for short) by the Assistant Engineer (B & F) K/Ward of the Municipal Corporation of Greater Mumbai ("MCGM" for short) alleging

unauthorized construction being put up by the Appellant to the extent mentioned in the said notice. The case of the above Appellant is on par with the case of the Appellants in Appeal from Order Stamp No.9854 of 2016 and seven companion matters which Appeals came to be disposed of by a Learned Single Judge of this Court (G. S. Kulkarni, J) by order dated 05.05.2016 as also the above Appellants 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 order dated 30.06.2016. The case of the Appellant would therefore be covered by the said orders that is the order dated 05.05.2016 and the order dated 30.06.2016. In the order dated 30.06.2016 passed by this Court (R. M. Savant J) reference is made to the order dated 05.05.2016. The relevant excerpts i.e. paragraphs 9 and 10 of the said order dated 30.06.2016 for the purposes of the present Appeal 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.”

2 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 MCGM which would be on the basis of the same terms as contained in the said order dated 05.05.2016.

3 In so far as the filing of the affidavit in reply/replies is concerned, as directions have already been issued in the order dated

05.05.2016 passed in Appeal from Order Stamp No.21446 of 2016 and companion matters, there is no warrant to issue separate directions in so far as the Notice of Motion filed by the above Appellant is concerned. It is expected of the MCGM that it would file affidavit in reply/replies in the already pending Notices of Motion concerning the Plaintiffs who have their structures in Aram Nagar. The above Appeal from Order to accordingly stand disposed of.

4 In view of the disposal of the above Appeal from Order, the Civil Application does not survive and to accordingly stand disposed of as such.

[R.M. SAVANT, J]