

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.916 OF 2016
WITH
CIVIL APPLICATION NO.1131 OF 2016

Dinesh Raisi Sheth Appellant/Applicant
V/s.
The Municipal Corporation of Greater Mumbai Respondent

ALONG WITH
APPEAL FROM ORDER NO.917 OF 2016
WITH
CIVIL APPLICATION NO.1132 OF 2016

ALONG WITH
APPEAL FROM ORDER NO.919 OF 2016
WITH
CIVIL APPLICATION NO.1134 OF 2016

Nitin Parshuram Vichare Appellant/Applicant
V/s.
The Municipal Corporation of Greater Mumbai Respondent

ALONG WITH
APPEAL FROM ORDER NO.918 OF 2016
WITH
CIVIL APPLICATION NO.1133 OF 2016

Kiran Saleraj Lodha Appellant/Applicant
V/s.
The Municipal Corporation of Greater Mumbai Respondent

ALONG WITH
APPEAL FROM ORDER NO.920 OF 2016
WITH
CIVIL APPLICATION NO.1135 OF 2016

Amrutlal Chimanlal Varma Appellant/Applicant

V/s.
The Municipal Corporation of Greater Mumbai Respondent

ALONG WITH
APPEAL FROM ORDER NO.921 OF 2016
WITH
CIVIL APPLICATION NO.1139 OF 2016
ALONG WITH
APPEAL FROM ORDER NO.922 OF 2016
WITH
CIVIL APPLICATION NO.1140 OF 2016

Kandra Ramesh Babu Naidu Appellant/Applicant
V/s.
The Municipal Corporation of Greater Mumbai Respondent

Mr. P.K. Dhakephalkar, Sr. Advocate, a/w. Mr. Dinesh Shah, i/by
Mr. Baptist Anthony Rumao, for the Appellant-Applicant in AO/916/2016.

Mr. Dinesh Shah for the Appellants-Applicants in AO/917/2016 to
AO/922/2016.

Mr. Pradeep Thorat, a/w. Ms. Madhuri More, for the Respondent-Municipal
Corporation in all the Appeals.

Mr. D.D. Kantaria, DO/AE, B & F, R/C Ward Officer of BMC is present.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 5TH OCTOBER 2016.

P.C. :

1. Heard learned counsels for the parties.
2. These Appeals are preferred against dismissal of the Notices of Motion filed by the appellants in the City Civil Court, Mumbai, thereby

seeking relief of interim injunction restraining respondent-Municipal Corporation from demolishing the suit premises, in pursuance of the notices issued to them under Section 351 of the Mumbai Municipal Corporation Act, 1888.

3. As per the case of the appellants, they are in possession of their respective premises since prior to the datum line and according to the notices issued under Section 351 of the Mumbai Municipal Corporation Act, 1888, they have submitted their reply and in support of their reply, they have tendered number of documents, before the respondent-Municipal Corporation, proving existence of the suit structures since before the datum line. However, it is submitted that, by the orders dated 26th / 28th August 2015, passed by the Designated Officer of respondent-Municipal Corporation, these documents were not properly considered and further order was passed directing the appellants to vacate the suit structures.

4. It is submitted that, when the appellants have challenged the said order of the Designated Officer of the respondent-Municipal Corporation before the Trial Court, Trial Court has not at all considered, in detail, those documents. Trial Court has only reproduced the submissions advanced before it and was pleased to reject the Notices of Motion filed by the

appellants on the count that the suit structures fall within the wet lands and mangroves area and, therefore, the relief of interim injunction is not granted.

5. It is common ground between the parties that the notices were not issued on the count that the suit structures fall within the wet lands and mangroves area, because such notices can be issued only by the Competent Authorities under the relevant provisions and not by the respondent-Municipal Corporation. The respondent-Municipal Corporation has issued notices to the appellants on the count that, the construction of the suit structures was illegal and unauthorized. However, this aspect, '*as to whether the construction of the suit structures is illegal, unauthorized or whether it was in existence prior to the datum line*', is not at all considered by the Trial Court.

6. In view thereof, the impugned orders passed by the Trial Court dismissing the Notices of Motion are required to be set aside and these matters are required to be remanded back to the Trial Court to consider the legality and validity of the order passed by the Designated Officer of the respondent-Municipal Corporation in pursuance of the notices issued, under Section 351 of the Mumbai Municipal Corporation Act, 1888, to the appellants by the respondent-Municipal Corporation, in the light of the

documents, which were produced by the appellants independently de hors the issue, '*as to whether the suit structures fall within the wet lands or mangroves area*'.

7. Ordered accordingly.

8. Trial Court to decide these matters as expeditiously as possible and preferably within a period of twelve weeks from the date of receipt of a copy of this order.

9. In the meanwhile, the ad-interim order, which is in existence, is continued pending the hearing of the Notices of Motion before the Trial Court.

10. All these Appeals, along with Civil Applications therein, stand disposed of in the above terms.

11. Registry is directed to communicate this order to the Trial Court forthwith.

[DR. SHALINI PHANSALKAR-JOSHI, J.]