

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO. 6420 OF 2017
WITH
CIVIL APPLICATION (ST) NO. 6421 OF 2017

Hanumant R. Chavan and ors.

.. Appellants

vs.

Municipal Corporation of Greater
Mumbai and ors.

.. Respondents

Mr. R. Chavan, Senior Advocate a/w. Prerna Lalchandani and
Chinmay Acharya for the Appellants.

Mrs. M.M. More for the Respondents.

CORAM : M. S. SONAK, J.

DATE : 05 APRIL 2017.

P.C. :-

1] Heard Mr. Chavan, learned senior advocate for the appellants
and Mrs. M.M. More, learned counsel for the respondents.

2] The challenge in this appeal is to the order dated 1 March
2017, by which, learned Trial Judge has declined the interim reliefs
to the appellants-plaintiffs.

3] On 15 March 2017, this Court made the following order:

“1] Place the matter on 5 April 2017 on supplementary board.

*2] The parties are put to notice that an endeavour shall be
made to dispose of this appeal finally at the stage of admission
itself.*

*3] The status quo is directed to be maintained. However, it is
made clear that if the appellants are occupying the suit structure,
they may do so, at their own risk and consequences.*

*4] Further, merely this appeal is pending, the Trial Court
should not refrain from taking into consideration the chamber
summons taken out by the appellants to challenge the Technical
Advisory Committee (TAC) report. In fact, learned Trial Judge is*

directed to proceed with the hearing in the said chamber summons.”

4] Mr. Chavan submits that necessary chamber summons have been taken out to challenge the TAC Report. Since, it is the case of the appellants that the TAC Report suffers from several errors. Further he points out that the Report was dated 29 August 2015 and it was placed on record on 6 April 2016. He submits that the learned Trial Judge, in the impugned order, has merely observe that there are no convincing reasons for accepting the challenge to the TAC Report. He submits that as on the date when the impugned order was made, the appellants did not even have proper opportunity to raise their challenge to the TAC Report. He submits that the appellants' challenge to the TAC Report was required to be appreciated, before the impugned order could have made, relying upon the very TAC Report.

5] The appellants have now taken out chamber summons setting out grounds for the challenge to the TAC Report. Although, the learned Trial Judge is right that the scope of review on the part of the Courts in such matter is quite limited, but that itself does not mean that the parties should not be permitted to at least put forth their case. Further, on the date when the impugned order was passed, it does appear that careful cognizance was not taken of the TAC Report and the challenge of the appellants to the TAC Report.

6] On this short ground, the impugned order dated 1 March 2017 is set aside. The learned Trial Judge is directed to reconsider the

appellants' notice of motion alongwith chamber summon, which set out the grounds for challenge to the TAC Report. The Municipal Corporation of Greater Mumbai (MCGM), no doubt, is entitled to oppose the grant of any interim reliefs and therefore, there is no necessity for restoring the application moved by the MCGM to vacate the earlier interim orders. All the grounds in the said application can also be urged by the MCGM, when the appellants' notice of motion and chamber summons is to be considered. The notice of motion referred to in this case is the notice of motion taken out by the appellants seeking restrain against the respondents from taking any action under section 354 of the Municipal Corporation Act, 1888 (MMC Act).

7] The exercise of disposing of the notice of motion and the chamber summons should be completed as expeditiously as possible and in any case within six weeks from today. All contentions of all parties are kept open.

8] Until the notice of motion is disposed of, the *status quo* directed to be maintained by the order dated 15 March 2017 shall continue. Once again, it is made clear that the appellants may occupy the suit structure, at their own risk and consequences, under no circumstances they shall hold the MCGM responsible in the matter.

9] It is clarified that this Court has not gone into the merits of the matter and therefore, all contentions of all the parties are kept open.

10] The appellants should not delay the disposal of the notice motion and chamber summons and in any case, the learned Trial Judge finds that the appellants are delaying the disposal of the notice of motion, learned Trial Judge is free to vacate the *status quo* order though, such *status quo* order has been directed by this Court.

11 With the aforesaid observations, the appeal and civil application are disposed of

(M. S. SONAK, J.)

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