

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

**APPEAL FROM ORDER (ST) NO.4836 OF 2017
WITH
CIVIL APPLICATION (ST) NO.4837 OF 2017
IN
APPEAL FROM ORDER (ST) NO.4836 OF 2017**

Lakhamshi Premji Nisar & Ors. ..Appellants/Applicants
V/s.
The Municipal Corporation of
Greater Mumbai ..Respondent

Mr.Vishal Kanade a/w Mr.Vikhil Dhoka a/w Yesha Ajmera i/by
Solics Lex for the Appellants/Applicants.

Mr.P.J. Thorat a/w Mrs. Madhuri M. More for the Respondent-
MCGM.

CORAM : M. S. SONAK, J.

DATE : 22 FEBRUARY 2017.

P.C.

1. Heard Mr.Kanade and Mr.Dhoka for the appellants and
Mr.Thorat and Ms.M.M. More for the Municipal Corporation of
Greater Mumbai (MCGM).

2. The challenge in this appeal is to the order dated 27
January 2017, by which the learned Trial Judge has dismissed the
appellants Notice of Motion No.2325 of 2010 seeking to restrain the

MCGM from demolishing the suit structure, through which, the appellants are carrying on commercial activities, until the appellants are provided permanent alternate accommodation, equivalent to the area of the suit structure presently occupied by them.

3. Mr.Kanade, the learned counsel for the appellants submits that the inventory prepared by the Land Acquisition Department of the MCGM, itself indicates the area of the suit structures which, for example, in the case of appellant No.1 is 383.48 sq.ft. However, the alternate premises now allotted to the appellants have a much smaller area. In case of appellant No.1, the area offered is hardly 269.63 sq.ft. Mr.Kanade makes reference to the Chart in paragraph No.3 of the impugned order, to submit that there is great variance between the area of the suit structures and the area proposed to be offered to the appellants by way of permanent alternate premises. Mr.Kanade submits that as per the policy of the MCGM, persons who are to be displaced have to be offered the equivalent area by way of permanent alternate premises. Mr.Kanade submits that the appellants occupied the suit structures right from the year 1999. The learned Trial Judge has also held that issues raised by the appellants are triable. The contentions that the suit structures are causing a bottleneck, is contrary to the record,

since the service road which is proposed after demolition of the suit structures, ultimately approaches to a dead end. Mr.Kanade submits that the appellants have made out a *prima-facie* case and even the balance of convenience is in favour of grant of interim relief. No irreparable loss or prejudice would be caused to the MCGM, if interim relief is granted, pending the suit.

4. Mr.Kanade also submits that there was absolutely no reason to reject the appellants prayer for furnishing of additional information with regard to availability of area at Shimpoli. The MCGM cannot withhold such information and the reason stated in the impugned order for denial of such information to the appellants, is quite untenable.

5. Mr.Thorat, the learned counsel for the MCGM submits that the suit structures are the main cause of bottleneck in the area. On account of the suit structures, road widening has been hindered. As a result, there is no sufficient access to the fly over which is already constructed and even the access to the service road, which serves several structures/areas, has been obstructed. Mr.Thorat submits that the appellants were initially allotted premises at Dahisar. However, after consideration of their representation, they

are now allotted alternate premises at Shimpoli which is in the vicinity of the suit structure. As per the policy of MCGM, the allotment is on the basis of the area recorded in the survey documents. There is material on record to establish that the extensions made by the appellants to the original structures are unauthorized. The balance of convenience is clearly in favour of refusing interim relief, as otherwise, bottleneck will continue and public interest will suffer. For these reasons Mr.Thorat submits that the appeal is liable to be dismissed.

6. In this case, no doubt, learned Trial Judge has observed that the appellants have raised a triable issue in the matter of their entitlement to equivalent area by way of permanent alternate premises. However, learned Trial Judge, upon appreciation of the material on record has also held that pending the resolution of this issue, the balance of convenience is not to permit the appellants, to continue to undertake their commercial activities from the suit structure. This is because the continuance of the suit structure at the site, will amount to continuance of bottleneck in the area. The view taken by the learned Trial Judge is neither unreasonable nor arbitrary. The learned Trial Judge cannot be said to have erred in principle or breached the usual parameters in the matter of grant of

interim relief. Therefore, applying the test in the case of *Wander Limited and Anr. V/s. Antox India Private Limited 1990(SUPP) SCC 727*, there is really no case made out to interfere with the impugned order refusing injunctive relief.

7. The issue as to whether the appellants are entitled to the equivalent area, is an issue which can always be decided in the suit. The scope of policy of MCGM is required to be examined. The question as to whether any extension came to be made to the original structures and if so whether such extensions were made with the permissions from the MCGM are, again matters which are required to be examined at the stage of the trial. However, pending such examination, the appellants cannot insist upon continuance in the suit structure. This is not a case where no rehabilitation, whatsoever, is offered to the appellants. Rehabilitation is infact offered to the appellants, pursuant to their own representation in Shimpoli Market which is in the vicinity of the suit structure. Only, the area offered by way of rehabilitation is not equivalent to the area presently stated to be occupied by the suit structure. The area offered is also not so inadequate, as to render effective rehabilitation futile.

8. The material on record does indicate that the suit structures have to be removed so that, bottleneck of the area is reduced. Mr.Thorat, the learned counsel for the MCGM on the basis of the instructions of the MCGM states that, within a period of one month from the removal of the suit structures, road widening will be completed, so that, the problem of bottleneck in the area is addressed substantially. He submits that the MCGM is of serious with removing the bottleneck as early as possible and therefore, work will be completed within one month from the date the suit structures are demolished.

9. The submission that, road widening is not at all necessary or that service road only approaches some dead end, cannot be accepted. Ultimately, in such matters, the MCGM is the best judge. The pleadings in the plaint do not make out any case of malafides. Considering the population pressure and the position of traffic in Mumbai, road widening, cannot, ordinarily be regarded as not being for public purposes. The construction of the fly over is already completed and if, road widening is necessary for effective access to the fly over, the same cannot, in the facts and circumstances of the present case, be delayed any further. Accordingly, there is no case made out to interfere with the

impugned order to the extent it declines relief of injunction to the appellants.

10. However, when it comes to the furnishing of the information, the learned Trial Judge, was not right in declining to issue directions to the MCGM to furnish the same, mainly on the ground that the appellants have not previously corresponded with the MCGM on the subject. The information applied for, relates to the availability of additional areas at Shimpoli Market. Such information can always be made available to the appellants. Even if, some additional area is available, that by itself, does not mean that the appellants have to be allotted such additional area at this stage itself. Ultimately, this is an issue which is required to be decided finally in the suit. However, public body like MCGM ought not to shirk its responsibility, when it comes to furnishing of information. Accordingly, the MCGM, is directed to furnish such information to the appellants within a period of four weeks from today. To that extent, this appeal is partly allowed.

11. Mr.Kanade the learned counsel for the appellants on the basis of the instructions from the appellants, seeks for some reasonable time in order to relocate. Mr.Thorat, the learned counsel

for the MCGM submits that the MCGM will immediately commence the process of demarcation of the areas at Shimpoli market. In the mean while the appellants can deposit the payment they are required to make. Since, this process will take about four weeks, the MCGM, will not, within this period of four weeks, take action to remove the suit structures. This is sufficient and reasonable time for the appellants to relocate. The appellants stated that they will make the payments within a period of two weeks from today and shift to the areas allotted at Shimpoli Market within a period of four weeks from today. The appellant stated that they shall of course, do so, without prejudice to the rights and contentions of the main suit. This is fair. The issue of additional area is kept open and shall be decided in the main suit, in accordance with law and on its own merits. Infact, the learned Trial Judge shall dispose of the suit as expeditiously as possible and in any case within a period of 18 months from today. All contentions of all parties are kept open.

12. The observations in the impugned order as also the present order are only *prima-faice*, and therefore, the learned Trial Judge need not be influenced by such observations at the stage of the disposal of the main suit.

13. The appeal is partly allowed to the aforesaid extent, the information as applied for by the appellants is to be furnished by the MCGM within a period of four weeks from today.

14. The impugned order, to the extent, it declines relief of injunction to the appellants, is not interfered with. There shall be no order as to costs.

15. All concerned to act on the basis of the authenticated copy of this order.

(M. S. SONAK, J.)