

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO. 8075 OF 2017**

Jayesh Hasmukh Shah

...Appellant

Versus

The Municipal Corporation of Greater Mumbai
& Anr

...Respondents

**WITH
CIVIL APPLICATION (ST) NO. 8076 OF 2017
WITH
CIVIL APPLICATION (ST) NO. 9118 OF 2017**

Mr SM Shettigar, *for the Appellant.*

Mrs MS Bhoir, *for the Respondents MCGM.*

CORAM: G.S. PATEL, J

DATED: 6th June 2017

PC:-

1. Heard.

2. The Appeal is directed against an order of 17th March 2017 declining ad-interim relief. The Plaintiff sought protection in respect of a room or enclosed area on the first floor of a structure at 31/33, Moti Mansion, Girgaum, Mumbai. This was the subject of a notice issued by the Respondents, MCGM and its Assistant Engineer. The

notice claimed that this first floor enclosed structure, which abuts an open terrace, was illegal. It was also contended by the Respondents that the MHADA had declared the entire structure to be dangerous. The Appellant submitted before the learned Single Judge that the designated officer of the MCGM did not consider on the Plaintiff's documents. The MCGM only filed a MHADA notice of three years earlier, 20th December 2014, saying that the structure was "most dangerous".

3. Today, Mr Shettigar has shown me a compilation of several photographs. These indicate, *prima facie*, that the first floor enclosed room which has an external grille throughout and sliding windows as also air conditioner compressor units, cannot possibly be recently constructed. It appears that the portions of the structure above the first floor (second floor and upward) were in fact demolished but this portion was retained. The compilation of photographs is taken on record and marked "X" for identification with today's date.

4. My attention is drawn to an inspection report dated 9th January 2017 of one MP Abhyankar, an Architect engaged by the Plaintiff/Appellant. This document was annexed to the plaint and was before the learned Single Judge. It has not been addressed in the impugned order. The document *prima facie* indicates that the upper floors above the second floor were demolished. The ground and first floors are in the same line. The conclusion is that the existing enclosed area or room on the first floor is part of the ground plus one construction and is not newly constructed or reconstructed. As against this, there is no inspection report from the MCGM to the

contrary on record. No such document was placed before the Learned Single Judge either.

5. In my view, the Notice of Motion will have to be heard at an early date. There is enough to warrant the grant of ad-interim relief. In the meantime, there will be an ad-interim injunction in terms of prayer clauses (a), (b) and (c) of the Notice of Motion No. 1015 of 2017, which read thus:

"(a) Pending hearing and final disposal of the suit this Hon'ble Court by a temporary order and injunction of this Hon'ble Court be pleased to restrain the Defendants either through themselves or through their officers, servants and agents from demolishing and or taking any steps to demolish said alleged authorized construction lying and situate at Room No. 5, 1st Floor, Moti Mansion, 31/33, Dr. Deshmukh Lane, V. P. Road, Girgaon, Mumbai 400 004, pursuant to Show Cause Notice bearing No. D/DO2D/216/351-MMC ACT/ D116N)1/08-09-2016 dated 20th September 2016 of Defendant No. 2, u/s 351 of the Mumbai Municipal Corporation Act and the final order bearing no. 10250 dated 28th February 2017 of Defendant No. 2 signed on 8th March 2017;

(b) That pending the hearing and final disposal of the aforesaid suit, the Defendants either through themselves or through their servants, employees and agents be restrained by a temporary order and injunction of this Hon'ble Court from in any manner obstructing or preventing the Plaintiff or his family members from using, occupying and/or residing in the suit premises, being Room No. 5, 1st Floor, Moti Mansion, 31/33, Dr. Deshmukh Lane, V. P. Road, Girgaon, Mumbai 400 004.

(c) Pending hearing and final disposal of the suit, this Hon'ble Court by its temporary order and injunction be pleased to stay the implementation, execution and effect of the Show Cause Notice bearing No. D/DO2D/216/351-MMC ACT/ D116N)1/08-09-2016 dated 20th September 2016 issued by Defendant No. 2 u/s 351 (1) of the Mumbai Municipal Corporation Act, 1888 and also the Final Speaking Order bearing no. 10250 dated 28th February, signed by Defendant No. 2 on 8th March 2017, in respect of the suit premises or any part thereof."

6. I am informed that the Notice of Motion is already scheduled for 19th June 2017. On that date the learned Single Judge will issue the appropriate directions for filing Replies and Rejoinders. The Trial Court is requested to dispose of the Notice of Motion at its earliest convenience and, if possible, within five months from today.

7. The Appeal is disposed of in these terms. There will be no order as to costs.

8. In view of this, the Civil Applications do not survive and are disposed of as infructuous.

(G. S. PATEL, J.)