

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 640 OF 2015
WITH
CIVIL APPLICATION NO. 796 PF 2015

Zeenat Ara Wd/o Sayed Akil Hasan	...Appellant
<i>Versus</i>	
The Municipal Corporation of Greater Mumbai	...Respondent

Mr VR Tripathi, *for the Appellant.*
Mrs Madhuri More, *for the Respondent-MCGM.*

CORAM: G.S. PATEL, J
DATED: 19th June 2017

PC:-

1. The Appeal is directed against an order dated 26th March 2015. The Municipal Corporation of Greater Mumbai (“MCGM”) claimed that the chimney to the Plaintiff’s bakery was unauthorized. The plaint itself says that this is a wood-fired bakery. Evidently it generates smoke. The plaint itself says that the chimney is required for environmental purposes and to ensure the proper dissipation of the smoke from the bakery’s ovens.

2. This seems to have totally escaped the MCGM’s attention. The bakery cannot function without a chimney. In fact the chimney

is required to comply with the MCGM's own conditions as to safety, nuisance, smoke, health and hygiene.

3. The learned Judge with respect omitted to appreciate this critical aspect. Allowing the MCGM to proceed against the chimney would result in a complete closure of the bakery, one that is admittedly licensed and not unauthorized. In a situation like this I would imagine that it was for the MCGM to show that the chimney is not authorized rather than to put the burden on the Plaintiff to show some historical document especially since it is inconceivable that the MCGM could have ever authorized or licensed the bakery without proper ventilation, exhaust and smoke emission construction such as chimney. In fact the Plaintiff states that the chimney has been in operation since 1942. It is unreasonable in my view to accept that parties will maintain construction permissions going back 70 to 80 years like this while the MCGM, the Planning Authority, does not care to maintain its own records in a proper fashion.

4. This is the only point for decision and no purpose will be served by keeping the Notice of Motion pending. There is an order dated 20th April 2015 (KK Tated J) that directed the parties to maintain *status quo*. The *status quo* order will continue, therefore, as the final order on the Notice of Motion and will continue pending the Suit.

5. The Appeal is allowed. The Notice of Motion itself is disposed of with these directions.

6. In view of this order, the Civil Application is also disposed of in the foregoing terms.
7. An authenticated copy of this order is to be sent to the Registrar of the City Civil Court for record to show the Notice of Motion as disposed of.
8. Parties will also be at liberty to place a copy of this order before the Trial Court.
9. The Appeal from Order and the Civil Application are both disposed of in these terms with no order as to costs.

(G. S. PATEL, J)