

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 434 OF 2015
WITH
CIVIL APPLICATION NO. 781 OF 2016

M/s. Monish Builder .. Appellant
vs.
The Mumbai Municipal Corporation
of Greater Bombay .. Respondents

Mr. Mohit Jadhav for Appellant.
Ms M. M. More for Respondents – MCGM.
Mr. Rakesh Dave in Civil Application 781 of 2016.

CORAM : M. S. SONAK, J.
DATE: 20 FEBRUARY 2017

P.C :

1] Heard.

2] This appeal is directed against the order dated 13 February 2015 made by the City Civil Court, Mumbai, dismissing appellant's motion for ad interim relief restraining the Municipal Corporation of Greater Mumbai (MCGM) from executing notice under section 354-A of the Mumbai Municipal Corporation Act, 1888 (said Act).

3] In the impugned notice, it is stated that construction of 11th floor, is in excess of the approvals granted and is consequently, illegal and unauthorised. In the impugned order made by the learned City Civil Court also, it is observed that such construction was undertaken by the appellant without obtaining any sanction or

approvals from the MCGM and therefore, the same is clearly illegal and unauthorised.

4] At this stage, there is no necessity to go into the issue as to whether the construction in question is unauthorised or not because, in the meanwhile, the appellant submitted a proposal for regularization of 10th, 11th and 12th floors. This is a clear admission that the 11th floor construction is clearly illegal and unauthorised and therefore, there was no case made out to restrain the execution of the impugned notice dated 25 February 2014.

5] Some limited relief was granted to the appellant on basis of the submission that the decision of the MCGM in the matter of regularization had not been conveyed to the appellant.

6] On 30 August 2016, this court made the following order :

“1] As per the order passed by this Court on 29th August 2016, the parties were directed to take instructions as to the proposal of the regularization of 10th, 11th and 12th floors of the building which proposal was submitted by the appellants to the Municipal Corporation. Today, the learned Counsel for the applicant intervenor had filed photo copies of the letter dated 29th June 2015 issued by the Municipal Corporation to one Sanjeev Hate, Architect of the appellant informing him that the said proposal is rejected and directing him to demolish the work carried out beyond commencement

certificate.

2] Learned Counsel for the appellant submits that the appellant's Architect has not received such a letter and he is ready to file affidavit to that effect. Learned Counsel for the respondent Corporation submits that she has yet not received instructions as the officer of Municipal Corporation is not present in the court today.

3] In view thereof, S.O. 20th September 2016. Learned Counsel for the Municipal Corporation to keep the concerned officer present before the court on the adjourned date. Learned Counsel for the appellant also to file necessary affidavit giving exact position, with advance copy to the intervenor. Ad-interim relief granted earlier to continue till then."

7] Thereafter, from time to time, the matter was adjourned on basis of the submissions that the MCGM's decision is not communicated. Finally, in February 2017 further time was declined and the MCGM also, produced its decision on record and furnished copy to learned counsel appearing for the appellant. There is a dispute as to whether such decision was communicated earlier to the appellant or not. Be that as it may, from the communication, it is quite clear that the plea for regularization was itself incomplete and therefore, the same was rejected. In the communication dated 29 June 2015, there is a direction issued to the appellant to demolish the work carried out beyond the C.C., failing which further action will be intimated in the matter.

8] In the aforesaid circumstances, there is absolutely no case made out to interfere with the impugned order. The appellant cannot put up unauthorised constructions and thereafter, seek interim reliefs on the spacious plea that the application for regulation is pending. Learned trial Judge was right in such circumstances, to decline to exercise any discretion in favour of such appellant.

9] The appeal is therefore dismissed. The ad interim order is vacated.

10] In view of dismissal of appeal, civil application for intervention does not survive and is disposed of accordingly.

11] Learned counsel for the parties point out that this very matter is once again listed for 22 February 2017 at sr. no. 10., since this matter is now disposed of, such listing will have no effect.

(M. S. SONAK, J.)