

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO. 13518 OF 2017
WITH
CIVIL APPLICATION (ST) NO. 13521 OF 2017

Aditya Dadarkar Real Infra Private Ltd Co & Anr ...Appellants
Versus
The Municipal Corporation of Greater Mumbai
& Ors ...Respondents

Mr Rakesh Kumar, *with Mr Laxminarayan Shukla, i/b M/s Legal Vision, for the Appellants.*
Mr J Reis, Senior Advocate, *a/w Mrs Madhuri More, for Respondent No. 1-MCGM.*

CORAM: G.S. PATEL, J
DATED: 14th June 2017

PC:-

1. The Appeal is directed against an order dated 4th May 2017. This order refused the Plaintiffs ad-interim reliefs. The Appeal was filed without a copy of the order. It is made available now. The Court Associate/Sheristedar was included with the appropriate flag with the Court Papers.

2. The suit was filed challenging a notice issued under Section 354-A of the Mumbai Municipal Corporation Act 1888 (“**the MMC Act**”). According to the Plaintiffs, the notice was entirely illicit and

motivated. It asked the Plaintiffs to show cause within 24 hours why the Plaintiffs' structure at Survey No. 47, Hissa Nos.6/1, 6/2, 6/3 and 6/4, CTS Nos. 31, 32, 33 and 34 of Gorai Villaage, Taluka Borivali should not be demolished. Mr Kumar says that the notice was served at Saturday 3.00 p.m. with only 24 hours' time till the next day, a Sunday, given to comply. Indeed, by the time the Plaintiff was able to move on 29th April 2017, the MCGM had carried out the so-called demolition of a large part of the Plaintiffs' property, extensively damaging the structure.

3. On 5th May 2017, SC Gupte J passed an order preventing further coercive steps and directed the filing of an Affidavit. That order referenced certain photographs. It required maintenance of the *status quo*. The MCGM has filed a return in the accompanying Civil Application. This Affidavit is dated 1st June 2017 of one Dharmendra Danji Kantharia. Annexed to this Affidavit are two pages of photographs at pages 14 and 15.

4. *Prima facie*, the material annexed to the MCGM's Affidavit does not support the contention that there was any ongoing or incomplete work; action under Section 354-A is confined to such works. To the contrary, the material supports Mr Kumar's submission that there was in fact no work ongoing on at site on the date of inspection, 21st April 2017. The photographs do not show any work ongoing at site although there are some stones and other materials seen in some images. This itself does not mean that the work was ongoing at site at that time. Mr Kumar fairly admits that what was going on were repairs. Mr Kumar also candidly admits

that the work that is seen in these photographs is one for which permission was sought but never obtained.

5. I am not concerned to which authorities the application for such work was to be made. The Appellant accepts that the work, whatever be its nature — repairs, reconstruction or fresh construction — is without the necessary permission received. This is noted for the record so that the parties are at liberty to act accordingly.

6. As far as the impugned action under Section 354-A of the MMC Act is concerned, I do not think it can be sustained. I will not, in assessing this, take any note of Mr Kumar's submission that all of this is a personal vendetta by certain officers because one of the Appellants is possessed of a quite substantial tract of land at Borivali.

7. The Appeal is allowed. In any case, the Motion is still pending. It will be decided in due course on merits.

8. In the meantime, the MCGM will not to take further action without giving the Plaintiffs sufficient notice as required by law. The Plaintiffs/Appellants agree and undertake that they will not carry out any further construction without obtaining all necessary permissions and sanctions from the authorities concerned.

9. The Civil Application is disposed of as infructuous.

(G. S. PATEL, J.)