

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO. 14388 OF 2017
WITH
CIVIL APPLICATION (ST) NO. 14389 OF 2017

Khalil Ahmed Nawab Ali Subedar & Ors	...Appellants
<i>Versus</i>	
Municipal Corporation of Greater Mumbai	...Respondent

Mr Vishal Kanade, i/b VT Dubey, for the Appellants/ Applicants.
Mrs MS Bhoir, for the Respondent, MCGM.

CORAM: G.S. PATEL, J
DATED: 6th June 2017

PC:-

1. The Appellants are the original Plaintiffs before the City Civil Court. They are aggrieved by an order of 17th May 2017 declining ad-interim relief. The Plaintiffs sought a restraint against the MCGM from acting in furtherance of notices issued under Section 354-A of the Mumbai Municipal Corporation Act 1888. According to the Plaintiffs, they are in possession of a shop of 900 sq.feet, at CTS no. 264, Village Kirol, LBS Marg, Ghatkopar (West). The shop seems to have been divided into three areas for internal convenience of the Plaintiffs. There appears to be some material on record to indicate that the shop itself has been in existence since the early

1960s. That is not the subject matter or the reason for the MCGM's notice. That notice, of 18th July 2016 (page 70), claims that the Plaintiffs were carrying on "unauthorised *vertical* extension with the help of brick work and ladi coba slab and rolling shutter". There is a site plan annexed overleaf. This is less than helpful. There ought to have been a site inspection report and sketch plan of an elevation showing the alleged work in progress and which was sought to be stopped. There is no site inspection report from the MCGM. There is no photograph of ongoing construction with an appropriate date and time stamp. These are fundamental requirements when ongoing construction is sought to be stopped on the ground that it is unauthorised.

2. Mr Kanade for the Appellants/Plaintiffs draws attention to a photograph of the exterior of the site at page 56 of the Paperbook. This, *prima facie*, does not indicate any vertical extension at all. The permission that the Plaintiffs sought is annexed at pages 49 to 51. These applications are of 16th February 2015 to 10th February 2016. They sought permission for tenantable repairs. There were responses from the MCGM on 29th February 2016 clearly saying that for such repairs no permission was necessary.

3. The discrepancy seems to be between MCGM's communications of 29th February 2016 and the impugned notice of 18th July 2016 (i.e., only a few months later). I notice in particular that there is no reference to the MCGM's own communication of 29th February 2016 and it is not shown how, according to the MCGM, the Plaintiffs began carrying out work in excess of to the

tenantable repairs that were the subject matter of the previous correspondence.

4. In my view, given this state of the record, the Plaintiffs ought to have been protected till the MCGM had filed the Reply and put all the relevant material before the Court.

5. I am informed that the Motion itself is to listed on 19th June 2017. On that date, the learned Single Judge will pass the necessary directions for filing Replies and Rejoinders. The Trial Court also fix a date for the hearing and final disposal of the Motion. The Trial Court is requested to dispose of the Motion at the earliest and, preferably within six months from today.

6. In the meantime, there will be an ad-interim order in terms of prayer clauses (a) of the Notice of Motion, which is set out at page 88 of the paperbook and which reads thus:

“(a) That pending the hearing and final disposal of the suit, the Defendants, their servants, agents and/or any other person/s acting on their behalf be temporarily restrained by order and injunction, from demolishing or pulling down or removing the Suit premises or any portion thereof, i.e., shop area admeasuring about 900 sq. ft., bearing C.T.S. No. 264 Village Kirol, Jamunabai Chawl, Opp. Naval Park, Chirag Nagar, L.B.S. Marg, Ghatkopar (W), Mumbai 400 086 in pursuance of Notice Bearing No. (I) N/DO3N/123/354-AMMC ACT/ N30NO1/18-7-2016 dated 18-7-2016 (ii). N/DO3N/123/354-AMMC ACT/N31NO1/18-7-2016 dated 18-7-2016, (iii) N/DO3N/123/354-AMMC ACT/N32NO1/18-7-2016 dated 18-7-2016 as well as 3 order

each dated 11-5-2-2017 issued U/Sec. 354-A of Mumbai Municipal Corporation Act.”

7. The Motion will be decided on its own merits. All contentions are specifically kept open. The decision will be uninfluenced by either the previous order of 17th May 2017 or the present order.

8. The Appeal is disposed of in these terms. The Civil Applications do not survive and are disposed of accordingly. There will be no order as to costs.

9. All concerned to act on an authenticated copy of this order.

(G. S. PATEL, J.)