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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER ST NO. 14772 OF 2017

WITH

CIVIL APPLICATION ST NO. 14776 OF 2017

Shilpa Mayank Tiwari …Appellant

Versus

Assistant Municipal Commissioner, MCGM …Respondent

AND

APPEAL FROM ORDER ST NO. 14779 OF 2017

WITH

CIVIL APPLICATION ST NO. 14780 OF 2017

AND

APPEAL FROM ORDER ST NO. 14784 OF 2017

WITH

CIVIL APPLICATION ST NO. 14786 OF 2017

AND

APPEAL FROM ORDER ST NO. 14788 OF 2017

WITH

CIVIL APPLICATION ST NO. 14792 OF 2017

AND

APPEAL FROM ORDER ST NO. 14795 OF 2017

WITH

CIVIL APPLICATION ST NO. 14797 OF 2017

AND

APPEAL FROM ORDER ST NO. 14801 OF 2017

WITH

CIVIL APPLICATION ST NO. 14803 OF 2017

AND

APPEAL FROM ORDER ST NO. 15794 OF 2017

WITH

CIVIL APPLICATION ST NO. 15796 OF 2017

Mr Rajesh Kanojia, *with Swarna Chaudhary, i/b RES Juris, for the Appellant in all matters.*
Mrs Madhuri More, *for the Respondent-MCGM.*

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

PC:-

1. These Appeals will have to be allowed. The principal ground on which the Plaintiffs' Notices of Motion were dismissed was that the Plaintiffs had not, according to the learned Judge, identify with sufficient precision, the structure that was the subject matter of the notice. These are the findings in paragraph 5.

2. I may here incidentally observe that even the Court wishes to use sub-paragraphs, it is advisable that these be numbered for easier reference.

3. In any case, the learned Judge found that the description of the suit property in the plaint was insufficient and the Plaintiff had not included the necessary particulars of the dimensions of the premises.

4. What seems to have been overlooked is that these particulars were sufficiently stated by the MCGM itself in its impugned notice at page 52. It may be true that this is a larger structure that has been subdivided, but that again was for the MCGM to establish. It is noteworthy that the notice in question is directly addressed to the owner/occupier and then includes the name of the Plaintiff. Thus, the MCGM knew who was in possession. This notice sets out the dimensions of the structure in question. There could have been no such ambiguity.

5. Another peculiarity is that while this notice purports to be under Section 488 of the Mumbai Municipal Corporation Act, a provision that gives the Commissioner power to enter, inspect or carry out necessary works, this notice and power seems to have been bundled up with the provisions of Section 351. Whether or not such a notice is at all sustainable is a question that will need to be decided.

6. There is a *status quo* order that has been in operation since 26th July 2015. That order will continue.

7. The Notice of Motion is restored to file. Parties will appear before the learned Judge on 3rd July 2017. Necessary directions will

be issued for the filings of Affidavits and for scheduling the final hearing of the Notice of Motion at the Courts earliest convenience. The ad-interim order will continue till then.

8. It is clarified, however, that the Notice of Motion will be decided on its own merits uninfluenced either by the order under Appeal or the present order. It is also clarified that this order will not prevent the MCGM from issuing a further notice or taking further steps in accordance with law.

9. The *status quo* as of today is to be maintained. If any premises have been previously demolished by the MCGM, they shall not be reconstructed by virtue of this order.

10. All the Appeal from Orders are disposed of in these terms with no order as to costs.

11. The Civil Applications do not survive and are disposed of as infructuous.

(G. S. PATEL, J)