

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO.18179 OF 2017
WITH
CIVIL APPLICATION (ST) NO.18181 OF 2017

Kamlabai Pandurang Sonawane (deceased) Thr ...Appellants
LRs Ranjana Bhagwan Lahane & Anr
Versus
Municipal Corporation of Greater Mumbai & Anr ...Respondents

Mr Sumit Kale, *i/b Mr Uday Warunjikar, for the Appellants.*
Mrs MM More, *for Respondent No.1/MCGM.*
Ms Sonal, *with F Fredrick & P Thakur, i/b FF & Associates, for*
Respondent No.2.

CORAM: G.S. PATEL, J
DATED: 11th July 2017

PC:-

1. I am not inclined to allow the Appeal having heard Mr Kale for the Appellants, Ms More for the Municipal Corporation of Greater Mumbai (“MCGM”) and Ms Sonal for the 2nd Respondent.

2. The notice issued by the MCGM under Section 351 of the Mumbai Municipal Corporation Act, 1888 is at page 49 of the Appeal paper-book. It describes the allegedly unauthorised works. There are also three sketches. The first is a location plan that is not of much relevance. The second is a top-down ground floor plan.

This purports to show three structures. There is one to the extreme left. To its right is a square or rectangular area. Here, two other structures are shown, one in the top left corner and one in the bottom right corner. The third sketch is sectional drawing. This again shows three structures. The one to the left has an upper floor. Then there are two others to the right.

3. Ms More points out that the Assistant Commissioner, S/Ward passed a speaking order on 25th April 2012. The relevant portions are at pages 59 and 60 of the Appeal paper-book:

"From above documents it appears that there was an existence of a residential structure with attic floor admeasuring 26'0" X 44'6" having ht 18'0" with G.I. Sheet roof covering. From the copies of documents submitted it appears that the structure under reference is in existence prior to 17.04.1964. From the present condition of the structure it appears that the tenantable repairs might have been carried out by party in the past. Hence the structure under reference is made tolerated category. Hence no further action is warranted.

However the notice under Section 351 of MMC Act is also includes two more structures one is adjacent to main structure admeasuring 6.2m X3.5m constructed in B.M. Wall & A.C. sheet roof on ground floor and another structure is in back yard admeasuring 13 X 6.6.m constructed in B.M. wall & A.C. Sheet roof on ground floor. From the copies of documents submitted in this office. The existence of these two isolated structure does not prove."

4. If the speaking order is compared to the notice, Mr Kale submits, it is not possible to discern which of the three structures, according to MCGM, is admittedly tolerated. He also submits that as a result of this, there is unacceptable uncertainty in the issuance of the notice and in the subsequent order. It is his submission, one that I am inclined to accept, that matters of illegal construction demand precision and accuracy. One must be able to identify from the order the structure sketched in the notice and vice versa. Even if the sketch is not to scale, the units of the measurement should at least be consistent between the notice and the order, so that there is no ambiguity. Had the three structures been, for instance, labelled as *A*, *B* and *C*, this identification could have been immediately possible. This has not been done.

5. Yet again, I also find that the entire approach of the MCGM seems to be to assess only documents submitted by the noticee, with no reference at all to the MCGM's own records. This practice borders on the bizarre. The MCGM is the planning authority. It simply cannot be that it has no records at all for any structure in this city. This is especially so since here, the MCGM says that at least one of these three structures is a tolerated or permissible structure. The MCGM's order does not anywhere say whether any of these three structures correspond or conform to the MCGM's own records. It is about time that the MCGM realised that it is quite unreasonable to accept every person to retain documents in perpetuity for half a century or more, without being under any corresponding obligation as to its own record-keeping.

6. Before the Trial Court, therefore, the MCGM is required now to produce its own records relating to this property. In addition, the Plaintiffs will be entitled to tender further documents. To the extent possible, the Plaintiffs will identify which portion of their documents pertain to which of these structures. The Trial Court may also consider appointing a commissioner for local investigation if thought fit, and whether or not sought by the Plaintiff.

7. The impugned order is set aside. The Plaintiff's Notice of Motion is restored to file. It will be heard *de novo* on its merits uninfluenced by either the previous order or present order in Appeal except for the directions which I have issued to the Plaintiff. The 2nd Respondent, viz., the 2nd Defendant to the suit claim, who is the owner of the plot, will also be entitled to submit his own documents.

8. The learned Judge, City Civil Court, is requested to fix a schedule for completing all filings and for disposal of the Notice of Motion. The interim relief that was continued till 12th July 2017 will now continue pending the final disposal of the Motion, and, should the Motion be decided against the Plaintiff, for a period of three weeks thereafter.

9. The Appeal is disposed of in these terms. In view of disposal of the Appeal, the Civil Application does not survive and is disposed of accordingly.

(G. S. PATEL, J.)