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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER ST NO. 18836 OF 2017
WITH
CIVIL APPLICATION ST NO. 18837 OF 2017

Radha Vithal Shetty, through PoA Vishwanath V Shetty ...Appellant

Versus

Municipal Corporation of Greater Mumbai & Ors ...Respondents

Mr Sanjay Jain, with Prerna Lalchandani & Jaswandi Khatu, i/b CA Acharya, for the Appellant.

Mrs Madhuri More, for Respondent No. 1-MCGM.

Mr AG Tambewagh, Executive Engineer BP ES II, is present.

Mr RK Bedade, AE (B&F)/ DO-III, is present.

CORAM: G.S. PATEL, J

DATED: 25th July 2017

PC:-

1. The challenge in the suit was to a notice dated 14th June 2014 issued by the Municipal Corporation of Greater Mumbai (“MCGM”) under Section 53 of the MRTP Act (page 95 of the Appeal paper-book). The MCGM said that the plaintiff’s work of unauthorised earth filling and construction of a pump room rendered the pump room liable to be demolished.

2. The plaintiff sought relief in respect of this notice and by way of a Notice of Motion sought an order that her regularisation application be considered by the MCGM without insisting on a no objection from the 43% legal heirs of the original owners. By the impugned order dated 23rd June 2017, the learned Judge of the Trial Court dismissed the Notice of Motion.

3. There no doubt that a pump room is permitted under the relevant Development Control Regulations (“DCR”), namely, DCR 30 (1)(c), and is free from FSI as provided in DCR 35(2)(ii) and (xiv). That, however, does not mean that its construction does not need the MCGM’s permission. That permission must be sought and obtained. If not, a party is certainly entitled to apply for regularisation, provided his application falls within the MCGM’s regularisation policy.

4. The plaintiff’s grievance is that the regularisation application is not being considered simply because the plaintiff is unable to get the consent of these 43% legal heirs, there being disputes *inter se*. The requirement by the MCGM of consent for the pump room, one that is situated in the open space next to the Bharat Cafe, is unreasonable in view of these disputes — the permission will never be obtained — and such a permission is wholly unnecessary. The pump room itself is exempt from FSI. It is not a usable or habitable space. It does not count toward built up area. There cannot be a requirement for owner permission for such a limited construction, one that is undoubtedly necessary as an essential amenity to the enjoyment and use of the plaintiff’s premises.

5. Indeed, this action would result in an inherent contradiction. There is no dispute that the plaintiff's hotel and restaurant, Bharat Café, is authorised and licensed. The licenses would include not only a Shops and Establishment License but a Health License too. The Health License would in turn require that there be adequate sanitary facilities. This requires water supply. This is also required from the perspective of food safety. It surely cannot be suggested that for want of permission from these 43% legal heirs there should be a consequential violation of the health, sanitation and food safety standards, requirements and norms. The MCGM is undoubtedly required to balance all these factors.

6. The MCGM will, therefore, not insist for the purposes of pump room on the consent of these 43% legal heirs. It must, however, consider the regularisation application on its own merits and Mrs More for the MCGM, on instructions, states that the regularisation application dated 19th March 2015 will be considered and disposed of within six weeks from today.

7. The plaintiff has already submitted all the necessary documents. The Executive Engineer (Building Proposal), Eastern Suburbs, will take a decision and pass a reasoned order within six weeks from today. If that order is against the plaintiff, it will not be acted upon for a period of two weeks thereafter. The Executive Engineer will decide the regularisation application in terms of all applicable laws and the current directives issued by the Municipal Commissioner. It is clarified that the entire proposal is to be limited to a consideration of the regularisation of the pump room and nothing else.

8. The MCGM is at liberty to take independent action in respect of any other construction or development that it believes to be unauthorised.

9. Liberty to the plaintiff to apply afresh in the Suit depending on the outcome of the regularisation proposal and, if necessary, also to seek an amendment to the plaint.

10. The Appeal and the Civil Applications are disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)