

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO.18949 OF 2017
WITH
CIVIL APPLICATION (ST) NO.18950 OF 2017

Tulsidas Khimji A Partnership Firm	...Appellant
<i>Versus</i>	
Designated Office-I Asst Engineer (Building & Factory)	...Respondent

Mr Karl Tamboly, with S Mungale, for the Appellant.
Mrs MM More, for the Respondent No.1/MCGM.
Mr Ashish Mundada, Jr Engineer, 'B' Ward, present.

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

PC:-

1. The Municipal Corporation Greater Mumbai's ("MCGM") action is *prima facie* wholly untenable. It issued a notice dated 8th June 2017. This was pasted on the Plaintiffs' property alleging that the Plaintiffs had unauthorisedly erected an 'ISMB channel' (Indian Standard Medium Beam' channel), welding and fabrication 'to support the roof', and did so without obtaining permission. This was followed by an order of 16th June 2017.

2. It is true that there are contradictory statements made in paragraph 11 of the plaint at page 22 of Appeal paper book and in the

Plaintiffs' Advocate's reply in paragraph 12 at page 62, but that is largely irrelevant. What the Plaintiffs said was that there was a fire in the adjacent property. This damaged part of the Plaintiffs' structure's roof. The structure itself was never said to be unauthorised or illegal. The Plaintiffs only attempted tenantable repairs to that roof. This necessarily required beams or girders and the galvanized iron (GI) sheet roofing. Obviously, the roof existed before. It had to have been there. Replacing the GI sheet roofing equally obviously needs a supporting framework. None of this can be said to be anything except repairs, and tenantable repairs at that.

3. There is no question of this work being 'unauthorised' and it is not pointed out how this kind of work is *not* tenantable repair. It surely cannot be the suggestion of the MCGM that a property owner whose structure's roof is damaged in an accidental fire has to make do without a roof or that such repairs require permission. It is not the MCGM's case that any extension or additional floor was being added. The MCGM seems to have simply acted on the basis of a complaint by the Mumbai Port Trust without actually applying its mind to whether there was substance to that complaint.

4. All of this unfortunately escaped the attention of the learned Judge of the City Civil Court, who declined ad-interim relief by his order of 6th July 2017. That order is set aside.

5. At this stage, Mr Tamboly for the Appellants-Plaintiffs points out that if all this is not bad enough, the MCGM has since acted, and, using a large excavator and a JCB torn down the roofing, and in

the process, damaged part of the brick masonry work which is not even the subject matter of the notice. This is evident now from a set of photographs shown to me by Mrs More for the MCGM on instructions of the Officer Mr Ashish Mundada. If this is supposed to show that the work was illicit or unauthorised, the effort is misdirected. It shows nothing but high-handedness on the part of the MCGM. The Plaintiffs'/Appellants' additional Affidavit from pages 92 to 102 is taken on record. This also shows the extensive damage caused by the MCGM. All this demolition work was entirely unjustified.

6. Since the MCGM Officer still insists, despite all this material, that the roofing work was unauthorised, there will be an interim (not ad-interim) injunction in terms of prayer clause (a) of the Plaintiffs' Notice of Motion at pages 10 and 11 of the Appeal paper-book. This injunction will now continue pending the Suit, and, should the suit be decided against the Plaintiffs/Appellants, for a period of six months thereafter. The Motion will stand disposed of. The Trial Court will pass a formal order disposing of the Motion in these terms.

7. The Suit will be heard in the regular course. It is not expedited. The Plaintiffs will, in the meantime, be at liberty to put up the roof and to re-erected the brick masonry wall. They agree and undertake not to make any unauthorised extensions or additions, either horizontal or vertical. The only work permitted is the restoration of the roof and the brick masonry wall. The Plaintiffs are also permitted to move a Chamber Summons to amend the

plaint to include a claim in damages, including general damages against the MCGM and the officer in question Mr Ashish Mundada.

8. 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.)