

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 904 OF 2014
WITH
CIVIL APPLICATION NO. 1087 OF 2014**

The Municipal Corporation Gr Mumbai	...Appellant
<i>Versus</i>	
Uday Anant Gore	...Respondent

Mrs Madhuri M More, for the Appellant/MCGM.

**CORAM: G.S. PATEL, J
DATED: 10th July 2017**

PC:-

1. The Municipal Corporation is in Appeal against an order of 11th June 2014. That order was made on the Plaintiff's Notice of Motion for an injunction restraining the Municipal Corporation of Greater Mumbai ("MCGM") from demolishing the Plaintiff's structure. The MCGM issued a notice saying that there was an unauthorised construction of a shed with a GI Sheet wall and roof. The Plaintiff replied to the notice and the Assistant Municipal Commissioner concluded that the structure was unauthorised and had to be pulled down.

2. The Plaintiff claimed to be a tenant of this structure in a chawl known as MB Qureshi Chawl at Samarth Nagar, Jogeshwari (E). That chawl has existed since before 1961. The Plaintiff denied carrying on any construction. He said the suit structure was also in existence before 1961-1962. The Plaintiff alleged that the Municipal Officers had never visited the site or seen the suit structure.

3. The Defendant said that it had received complaints about the structure, which was then inspected. Unauthorised work was found to be in progress. The land was required by the MCGM for its Water Supply Department. The structure was not unauthorised but was an encroachment on Municipal land.

4. The only reason for the injunction is set out in paragraphs 13 and 14 of the order:

“13. In this context, it is important to note her that a person Sanjay Kamble who claims to be a social worker made a complaint to the Municipal Commissioner on 29.01.12 (According to the Advocate for the MMC, the date on the letter is 29.06.12 against the Notice structure). The impugned notice was thereafter issued on 13.08.2012, so even if it is noticed that complaint was received on 29.06.12 and notice was issued on 13.08.12. It is difficult to accept the submissions that the construction thereon going at the time of issuance of notice during this period for more than one and half month. In fact the complaint itself alleges that the Plaintiff has unauthorizedly constructed the room at the suit site. Neither inspection report nor panchanama or photographs

are filed by the Defendants/MMC. To support the submissions that, the construction of the notice structure was in progress. Preparation of inspection report, photographs showing the date and status of work and preparing panchanama of the work being in progress are the requirement as per MMC circular dated 29.04.2006 the same is well settled legal position.

14. Probably the structure was already completed before issuance of notice u/s.354A of MMC Act and therefore, it is prima facie doubtful whether the Defendants/MMC could refer Section 354-A of MMC Act. Therefore, prima facie case in favour of Plaintiff is made out. In this situation, demolition of the notice structure without proper course of action would unjust and illegal. Therefore, the Plaintiff would suffer irreparable loss if temporary injunction is refused. Balance of convenience lies in favour of the Plaintiff. Plaintiff is entitled to temporary injunction. Hence I answered point Nos.1, 2 and 4 in affirmative and issue No.3 in favour of Plaintiff and pass the following order.

ORDER

- 1.** Notice No.1760/12 is made absolute.
- 2.** Defendants/MMC is restrained till disposal of the suit from demolishing or pulling down the notice structure in pursuance of the impugned notice u/sec.354 A of MMC Act dated 13.08.2012 and order passed thereon 1.11.2012.”
- 5.** In my view, the Court could not have proceeded on what was undoubtedly conjecture on its part. If the Court felt the need for any

inspection report, panchanama, or photographs, it could have called for these from the MCGM. The fact that they were not before the Court does not mean that these records were unavailable. There is no basis for the Court's assumption that the structure was "probably" already completed before the issuance of the notice. This is not a safe or sound basis on which to proceed, particularly given the pleading where the MCGM said that the land was Municipal land required for public water supply works and that the Plaintiff was an encroacher on this land.

6. Instead of proceeding on the basis of what the MCGM ought to have produced, with respect, the Trial Court ought to have focused its attention on what the Plaintiff had or had not produced. After all, this was Plaintiff's application for grant of relief and it had to be assessed whether the Plaintiff had made out a *prima facie* case. There is no assessment at all in the impugned order of any material on which the Plaintiff might have relied to establish that the structure was tolerated or regularised. There are only his statements to that effect.

7. The order cannot be sustained. It is set aside. The MCGM will be at liberty to proceed against the suit structure. However, given the passage of time, the MCGM is directed to give a fresh notice, grant a hearing and pass an order. If the Plaintiff wishes to question or impeach that notice or order he must do so in the present Suit and not by way of another suit.

8. The Appeal is disposed of in these terms. No costs.

9. The Civil Application does not survive and is disposed of as infructuous.

(G. S. PATEL, J.)