

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 700 OF 2016

Kailash Ramchandra Shirke	...Appellant
<i>Versus</i>	
Municipal Corporation of Greater Mumbai	...Respondent

Mr Rohan Prakash Surve, for the Appellant.
Mrs Madhuri More, for the Respondent-MCGM.

CORAM: G.S. PATEL, J
DATED: 15th June 2017

PC:-

1. The Appeal is by the original Plaintiff against an order dated 29th June 2016. The Plaintiff sought a restraint against the Municipal Corporation of Greater Mumbai (“MCGM”) and other Defendants from acting in furtherance of a notice dated 24th March 2011 issued under Section 351 of the Mumbai Municipal Corporation Act, which is at page 75.
2. The learned Judge found that *prima facie* there was no case and rejected the Notice of Motion.
3. The premises are at Shop No. 12, Ground Floor, Ruby Hill, 45-47, Ridge Road, Walkeshwar, Mumbai. The previous landlord of

the premises was one Riddhi Siddhi Safe Deposit Vault Pvt Ltd. It filed an ejectment Suit bearing R.A.E. & R No. 553/778 of 2006 in the Court of Small Causes at Mumbai. A question arose there whether the present Plaintiff (the defendant to that Suit) had made any additions or alterations. That issue was answered in negative, i.e., it was held that there were no additions or alterations.

4. The case of the MCGM was that there were no plans or authorizations for the noticed work. But before going to this, a look at the impugned notice itself at page 75 may be useful. There are distinct reasons given for issuing the notice. The first is an alleged lowering of the plinth within Shop No. 12. The second is the erection of a partition and the conversion of an area behind the partition wall into a washroom.

5. There is no dispute that the area is being used as a hair dressing salon or barber shop. The Plaintiff says that he has not lowered the plinth. It is the MCGM that has raised the road or footpath by placing paver blocks. The mismatch in the two levels is not, therefore, because of anything that the Plaintiff did but, on the contrary, because of the placing of paver blocks in the adjacent pavement by the MCGM itself. This is a factor that the Plaintiff attempts to demonstrate by drawing attention to a photograph that is at page 63 and *prima facie* it appears to be correct. In fact there can be no ostensible reason for the Plaintiff to lower the plinth below road level particularly on a hill slope at Ridge Road at Walkeshwar. I could understand if he tried to raise it to prevent flooding during the monsoon. But this is not the case. Clearly, this is a ground that ought to have been taken into account by the learned Judge.

6. The Plaintiff does agree that there is a temporary partition installed and a small washing area provided beyond for use along with the hair dressing salon, which itself is not unauthorized. At this stage, it is unclear whether the washing area requires a separate permission or can be regularized. *Prima facie* it does not seem to me to be the kind of work that would justify an extreme action of demolition. Indeed, I would imagine that having something like a barber shop without a washing area is altogether more undesirable.

7. The Appeal was admitted on 27th July 2016. In Civil Application No. 884 of 2016, there was an ad-interim relief in terms of prayer clauses (a) and (b).

8. The Suit itself is of 2012. Little purpose will be served by remanding the Notice of Motion for a fresh hearing. The Appeal succeeds.

9. The ad-interim order dated 27th July 2016 will continue to operate pending the hearing and final disposal of the Suit and, should the Plaintiff fail in the Suit, for a period of eight weeks thereafter.

10. The Appeal from Order is disposed of in these terms with no order as to costs.

(G. S. PATEL, J)