

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO. 920 OF 2015**

**WITH**

**CIVIL APPLICATION NO. 1121 OF 2015**

**AND**

**CIVIL APPLICATION NO. 1191 OF 2015**

Gajanan Vinayak Naik

...Appellant

*Versus*

Municipal Corporation for Greater Mumbai

...Respondent

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**Mr KP Tiwari, i/b M/s. KP Tiwari & Co., for the Appellant.**

**Mrs MS Bhoir, for Respondent No. 1-MCGM.**

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**CORAM: G.S. PATEL, J**

**DATED: 16th June 2017**

**PC:-**

1. There is an interim order dated 21st July 2015 that has continued till date directing the Respondent, the Municipal Corporation of Greater Mumbai, not to enforce the impugned notice of 19th August 2014 issued by it under Section 53(1) of the Maharashtra Regional & Town Planning Act 1966.

2. The dispute is in respect of what the MCGM refers to as an illegal construction of a room in an open terrace with the help of a

brick masonry wall and mangalore tiled roof admeasuring 16 feet x 10'8" feet x 9'10" feet (height). The MCGM also claims that there is an unauthorized extension of the kitchen within the open terrace with the help of a brick masonry wall and tiled roof admeasuring 13'2" inches x 5'8" x 9'6" at the third floor of Ladhabai Mansion Cooperative Housing Society Limited, 1-A, Mama Parmanand Marg, Opera House, Mumbai 400 004.

3. The notice indicates that the only basis of this alleged illegality is that it is beyond the approved building plan No. EEBP/88611/D/AR dated 5th September 2002.

4. Now the learned Judge by the impugned order dated 24th June 2015 rejected the application for interim relief noting that there was a reply to the notice, and then stating that the MCGM Officer had considered the reply and other documents. Concluding that the documents produced by the Plaintiff did not prove authorization, the learned Judge refused ad-interim reliefs.

5. With respect, there are two immediate difficulties with the approach taken by the learned Judge. I notice in paragraph 2 that there is a reference to an original plan filed by the MCGM. This appears to have been determinative of the Trial Court's decision. This plan is not placed on Affidavit. It does not form part of the record, and hence is not part of the compilation before me. Mr Tiwari says no copy was given to him either and in fact he disputes that it was filed in Court. He says it was merely shown to the Court. This is a most unsatisfactory way of approaching matters. The

records of the Court must be maintained with integrity. This is required for public confidence as much as to ensure that the work of the court is not subjected to unfounded allegations. When documents are referenced in this fashion, the result is a very great deal of uncertainty and a lack of accuracy. This is not in the interest of anyone and it certainly makes the task of a successor Judge or an Appellate Court infinitely more difficult. This is easily avoided by requiring any party, whether it be a private party or an authority, to place its documents on Affidavit so that they are formally a part of the record and can be scrutinized properly.

6. The second difficulty is the reference in paragraph 2 to the document annexed to the plaint by the Plaintiffs. This is an official plan prepared by the Maharashtra Housing & Area Development Authority. The learned Judge found that it is dated 16th July 2005 and then concluded that the construction was after that date. This does not, however, mean that the construction was unauthorized or illegal, which was the only point that was required to be tested. In fact, it appears to be common ground that the building was in fact reconstructed by MHADA, a Government Agency. It surely cannot be suggested that it is for an individual citizen to ensure that MHADA reconstructs according to MCGM-sanctioned plans. Individual citizens are not in any position to supervise, control or direct the work of public authorities. The noticed areas appear *prima facie* to be in accordance with the MHADA plan of 2005. It seems to be thoroughly unfair for the MCGM to then ask the Plaintiff to produce the original sanctioned plans from a time before the MHADA reconstruction and to indirectly question the legality of the MHADA construction. It is not the MCGM's case that the

MHADA construction was illegal or not in conformity with any authorized plan.

7. At a minimum, at the ad-interim stage, a document that was on record such as the MHADA plan should have received due weightage as opposed to some unidentified document merely shown to the Court.

8. I find it very difficult to sustain this order. It will have to be set aside. Two years have passed, almost exactly to the day, since the refusal of the ad-interim relief. By this time, the Notice of Motion ought to have been disposed of. It has not. I will do so. I do so also because this notice is in respect of an internal kitchen and structure and does not obstruct any public passage way or road line.

9. The Notice of Motion is made absolute in terms of prayer clauses (a) and (b). This order will continue till the hearing and final disposal of the Suit and, should the Suit be decided against the Plaintiff, for a period of twelve weeks thereafter.

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

11. As to the question of the practice being followed, once again I would request the learned Principal Judge of the Bombay City Civil Court to issue necessary practice directions.

**12.** Let a copy of this order be forwarded to the learned Principal District Judge, Bombay City Civil Court for necessary action.

**(G. S. PATEL, J)**