

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 1213 OF 2014

WITH

CIVIL APPLICATION NO. 1464 OF 2014

WITH

CIVIL APPLICATION NO. 243 OF 2016

Amrutben Meghji Nishar ...Appellant

Versus

The Municipal Commissioner, B.M.C. & Ors ...Respondents

AND

APPEAL FROM ORDER NO. 1214 OF 2014

WITH

CIVIL APPLICATION NO. 1465 OF 2014

Pravin Meghji Nishar ...Appellant

Versus

The Municipal Commissioner, B.M.C. & Ors ...Respondents

AND

APPEAL FROM ORDER NO. 1215 OF 2014

WITH

CIVIL APPLICATION NO. 1466 OF 2014

Jayanti Anandji Rita ...Appellant

Versus

The Municipal Commissioner, B.M.C. & Ors ...Respondents

Mr Javed Hussein, i/b Hussein & Co., for the Appellant in all three Appeals.

Mrs Madhuri More, for MCGM in all three Appeals.

CORAM: G.S. PATEL, J

DATED: 13th June 2017

PC:-

1. The three Appeals challenge a common order of 31st July 2013 dismissing the Plaintiffs' Notices of Motion for protection against demolition by the Municipal Corporation of Greater Mumbai on the ground that their structures are unauthorized. I am told that in the four years that have passed since, the Suit itself has ripened and the trial has commenced. In fact the Plaintiffs have closed their case. Officers of MCGM have been cross-examined. One further witness on behalf of the developer is to be examined and his documents are to be marked.

2. In the meantime, there has been an ad-interim order against coercive action that has held the field since 3rd September 2013. Given this conspectus and time frame, I do not see how any of the parties will be prejudiced if the ad-interim order dated 3rd September 2013 is continued till the final disposal of the Suit. If the Plaintiffs fail in the Suit, that order will continue for a further period of eight weeks thereafter.

3. The Appeals can be disposed of with these observations and directions. Undoubtedly, the Trial Court will decide the Suits on its own merits uninfluenced by the interim order or the present order.

4. All contentions are left open.

5. In L.C. Suit No. 5257 of 2012, original Plaintiff Amrutben Meghji Nishar has passed away. I will formally allow an amendment to Appeal from Order No. 1213 of 2014 to implead the heirs of the deceased original Appellant. The corresponding application for impleadment in Suit No. 5257 of 2012 will be decided on its own merits by the learned Trial Court.

6. The three Appeal from Orders and all Civil Applications are disposed of in these terms with no order as to costs.

(G. S. PATEL, J)