

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1584 OF 2012
WITH
CIVIL APPLICATION NO.3842 OF 2012**

Saibaba Mitra Mandal ...Appellant
Versus
The Municipal Corporation Of Greater Mumbai ...Respondents
& Ors

**WITH
CIVIL APPLICATION NO.3461 OF 2015**

Nemi Krishna Co Operative Hsg Soc Ltd ...Applicant
Versus
Shri Saibaba Mitra Mandal ...Respondent

Mr Sanjay Sawant, for the Appellant.
Mr Navin Parekh, with Ms Shakti Parwaney i/b Mrs M Bhoir, for
Respondent No.1.
Mr AP Khanduri, for Respondents Nos.2 to 4.
Mr SM Gorwadkar, Senior Advocate, with Mr RK Kalekar, i/b
M/s Aarkey Legal, for Respondent No.5.

CORAM: G.S. PATEL, J
DATED: 6th June 2017

PC:-

1. Admit. By consent, taken up forthwith for hearing and final disposal, without the requirement of either the R&P or private paper books.
2. The Appeal is against an order dated 18th October 2012 dismissing the Plaintiff's Suit. The matter has been pending since 2012 although the Suit itself is of 2001. The litigation is even older, and has been pending for the better part of two decades.
3. In this Appeal, the Court has often said that the Appeal should be disposed at the admission stage. Perhaps as a result, the record even before admission is a stack nearly two feet high.
4. The real difficulty is the frame of the judgment under Appeal. I find that although it was rendered after evidence, there is no reference in it at all to the testimony of any of the five witnesses or to any of the documents that were marked or led in evidence. It is impossible therefore to correctly assess a judgment rendered like this. In effect, the Appeal Court would have to do the work of a Trial Court: a complete appreciation of the evidence from start to finish (leave alone re-appreciation; that posits there is an appreciation in the first place) inevitably would be the task of the Court in appeal. This is hardly appropriate. It renders the task of the Appeal Court nearly impossible. Indeed, the learned Judge has rendered findings of the facts without any discussion whatever in regard to the evidentiary material before him. This was a civil trial and it required to be handled in the manner mandated by the Code of Civil Procedure, 1908. Once pleadings are filed, issues struck and

evidence led, it is not proper to render a decision without any discussion at all of the oral and documentary evidence that parties have strived and struggled to bring before the Court.

5. It is too late in the day now to expect parties to lead evidence afresh or to remand a matter for a fresh trial. Indeed, that is not even the suggestion of the Appellants/Plaintiffs themselves. In my view, it would be proper if the matter is remanded for a fresh decision on the evidence and record as it stands, and to direct the Trial Court to render a complete decision within a reasonable time, preferably within seven months from today, after hearing all parties and considering, in the manner required by law, the oral and documentary evidence on record. Each of the issues framed will have to be addressed on this basis.

6. I also believe that an additional issue does need to be framed as Issue No.3-A. The Plaintiffs are 27 stall holders at land Survey No.867(2)(Part), CTS No.334-A, Bajaj Road, Near Jethwa Nagar, Kandiwali (West), Mumbai. These stalls cover 105 metres. The question is not only about the quality of the material used to construct these stalls, i.e., whether or not these materials are flammable or dangerous, but more specifically — and perhaps most importantly — whether the stalls have any legal or lawful right or authority to be at this location in the first place. It is my understanding on a reading of rival pleadings that, according to the Respondents to the Appeal, i.e., the MCGM as also the Co-operative Society that the stalls in this location are entirely unauthorised. The stand of the Plaintiffs is, on the other hand, that they have the right in law and in accordance with applicable MCGM

policy to remain at this very location. This specific issue remained to be framed or addressed. I will now frame it as additional Issue 3-A in the following manner:

Issue No.3-A:—Whether the Plaintiffs prove that they are entitled to erect, locate and situate their 27 stalls at land Survey No.867(2)(Part), CTS No.334-A, Bajaj Road, Near Jethwa Nagar, Kandiwali (West), Mumbai and whether the location of the Plaintiffs' stalls at this site was ever authorised or permitted by the Municipal Authority ?

7. All before me are agreed that this in fact the principal issue to be tried in the dispute. It is agreed that no further evidence will be required on the additional issue. The Trial Court will address the additional issue as well.

8. The Trial Court is requested to render its decision at the earliest possible and, preferably, by 15th December 2017. Till then the existing *status quo* will continue. If the decision is against the Plaintiffs, the present order of *status quo* will continue for a period of eight weeks thereafter.

9. The First Appeal and all accompanying Civil Applications are disposed of with no order to costs.

10. The record and proceedings will be returned to the City Civil Court at Dindoshi. The Registry is directed to take care to ensure that the entire record and proceedings is returned. The record and

proceedings be sent back by 23rd June 2017. The Suit is to be listed for direction before the Trial Court on 30th June 2017.

11. All concerned to act on an authenticated copy of this order. Certified copy and issuance of writ, if any, expedited.

(G. S. PATEL, J.)