

Atul

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**APPEAL FROM ORDER NO. 885 OF 2015**

|                                |                |
|--------------------------------|----------------|
| Nayan Arvind Shah              | ...Appellant   |
| <i>Versus</i>                  |                |
| Kutubunisha Maqbool Khan & Ors | ...Respondents |

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**Mr Nishant Sasidharan**, *with Nakul Jain, i/b Maniar Srivastav & Associates, for the Appellant.*

**Mr SS Baswe**, *AE B&F, Officer of MCGM, is present.*

**Mrs MM More**, *for the MCGM.*

**Mr Ashutosh Kaushik**, *i/b M/s. Kaushik & Co., for Respondent No. 9.*

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

**PC:-**

1. The Appeal is by the 9th Defendant against an interim order dated 4th July 2013. The Plaintiffs' Notice of Motion was partly allowed in the following terms:

"1. Notice of Motion No. 644/13 is partly allowed.

2. Defendant No. 9 is hereby restrained from dispossessing plaintiff from the suit premises without following due process of law.

3. Defendant No. 9 is further restrained from surrendering the suit land occupied by the plaintiff to Municipal Corporation, Greater Bombay, without following due process of law.

4. Notice of Motion No. 644/13 is disposed of accordingly."

2. It is difficult to understand clause 3 above. Certainly the MCGM which is not a party could not indirectly restrained from taking possession after following due process of law. Similarly, the Appellant, original Defendant No. 9, could not have been restrained from complying with a demand for possession from the MCGM. In this context, the words "without following due process of law" being applied against Defendant No. 9 surrendering possession to the MCGM are without significance.

3. The order demands interference to that extent. The MCGM is always at liberty to take steps for possession or demanding surrender of the land, provided it does so in accordance with law. It can specify a time period for compliance. It is for Defendant No. 9 to decide whether to accept or contest any such demand or notice received from the MCGM. Certainly the Plaintiff and the 1st Respondent cannot restrain either the MCGM or Defendant No. 9 who claims ownership of the land.

4. As regards Clause 2 of the order, I am told that since the time of the order, 4th July 2013, a portion of the suit structures have, in any case, been demolished in road widening. The question of "dispossessing" the Plaintiff from the suit premises in the manner

described in clause 2, therefore, does not arise. This does not mean of course that the 9th Defendant/Appellant can forcibly dispossess the Plaintiff.

5. The restraint against the 9th Defendant from acting otherwise than in accordance with law against the Plaintiff must continue. This order will continue to operate pending the hearing and final disposal of the Suit.

6. Parties will appear before the Trial Court on 3rd August 2017 and obtain directions for the final disposal of the Suit.

7. The Appeal from Order is disposed of in these terms. There will be no order as to costs.

8. The MCGM's officer, who is present in Court, confirms that the entire suit property is in possession of the MCGM. The statement is noted. It is, however, disputed by the Plaintiff who says that only the portion that was required for road widening has been taken over by the MCGM.

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