

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 344 OF 2018
WITH
CIVIL APPLICATION NO. 451 OF 2018

Gamdevi Mata Mandir Trust	..	Appellant
vs.		
The Municipal Corporation for Greater Bombay	..	Respondent

Mr. Dhokale Eknath Ranjak for Appellant.
Mr. Rajiv Chavan – Senior Advocate with Priyanka Chavan i/b.
Madhuri More for Respondent - MCGM.

CORAM : M. S. SONAK, J.
DATE: 14 AUGUST 2018

P.C :

1] Heard Mr. Dhokale, learned counsel for the appellant and Mr. Chavan, Senior Advocate for the respondent – MCGM.

2] The challenge in this appeal is to the order dated 20th June 2018, by which, the learned trial Judge has declined ad interim relief to the appellant.

3] Mr. Dhokale, learned counsel for the appellants submits that the suit temple structure is not on public property but the same is on a private property. In this regard, he relies upon the report of the Assistant Collector dated 13th August 2018 as well as the 7/12 extract issued by the Revenue Authorities. He submits that though

both these documents were not available before the trial court, as the suit had to be filed in a hurry, since they are public documents they may be taken into consideration.

4] Mr. Dhokale further submits that the suit structure is neither on any road nor on any proposed road. In any case, he submits that the so-called road has never been acquired by the MCGM and there are documents at page 189 of the paper book in which the MCGM had admitted that the road is not in possession of MCGM.

5] Mr. Dhokale makes reference to a scheme for development of Koliwadas and points out to certain documents which according to him, indicate that the location where the suit structure is situated is included in said Koliwadas scheme. He also makes reference to a communication from the Government to the local authorities directing such local authorities not to take any action against any structures pending finalization of the scheme. Mr. Dhokale points out to a document at page 150 of the paper book, in which the MCGM itself has disclaimed any knowledge as regards the ownership of the land on which the suit structure is located.

6] Mr. Dhokale submits that none of the aforesaid contentions have been considered by the learned trial Judge before making the impugned order. He also points out that all these contentions were

raised in the reply to the show cause notice but the MCGM has failed to take into consideration. For all these reasons, Mr. Dhokale submits that the impugned order may be set aside and the ad interim injunction be granted as prayed for.

7] Mr. Chavan, the learned Senior Advocate for the MCGM submits that the suit structure is an unauthorized structure. He points out that not a single document has been produced on record to show that such structure was put up after obtaining permissions from the concerned authorities. That apart, he points out that the records indicate that a structure is on a public road and any regularization of such structure is bound to affect the free flow of traffic. He submits that in terms of the Government Resolution dated 5th May 2011 even illegal structures, which cannot be regularized as these would impede the free flow of traffic are required to be demolished in terms of the orders made by the Hon'ble Supreme Court as well as this Court. He points out that the impugned action was in fact in pursuance of the directions issued by the Hon'ble Supreme Court and this Court. He invites the Court's attention to the photographs at page 43 to the reply of the MCGM. He also invites the Court's attention to the sketch placed on record by the MCGM. He submits that from this, it is clear that the structure in question is virtually on the road and any regularization would

impede the free flow of traffic. He also points out that the appellant or rather the trustees of the appellant had himself given a letter dated 7th June 2018 when the demolition squad was at the site to the effect that the appellant would themselves undertake the demolition. He points out that such a letter was suppressed while seeking for ad interim reliefs and after the letter was produced all that was stated was that the letter was given under pressure and force from the MCGM Authorities. For all these reasons, Mr. Chavan submits that this appeal may be dismissed.

8] The rival contentions now fall for determination.

9] For the present, even if we are to proceed on the basis that there is no clarity as to whether the location where the suit structure is situated, is a part of the private property or a public property, there appears to be no serious dispute that the structure is unauthorized, in the sense, that the structure has no backing of any permissions from any authorities. At least the appellants, have not placed on record any permission or approvals in respect of the suit structure.

10] The GR dated 5th May 2011, which has been issued for the purpose of implementing the directions issued by the Hon'ble

Supreme Court as well as this Court, in the matter of illegal and unauthorized religious structures, *inter alia* provides that unauthorized structures which on account of issues of law and order or on account of obstruction to the free flow of traffic cannot be regularized even though such structures may have been put up before the cut off date, will have to be categorized as 'B Category Structures'. In terms of the GR even such structures are liable for demolition.

11] The contention that the suit structure is neither on any public road nor on any proposed road, cannot, be accepted. From the material produced on record, including *inter alia* the photographs, it is obvious that the structure in question is on the road or at least significant portion of the structure is on the road and there is no reason to fault the view taken by the MCGM that any regularization of such a structure is bound to impede the free flow of the traffic.

12] Therefore, taking into consideration the circumstance that the suit structure is backed by no permissions whatsoever and that the structure or at least major portion of the structure is on a road thereby impeding free flow of traffic, it cannot be said that the learned trial Judge has exercised discretion capriciously or even illegally in declining ad interim reliefs.

13] The issue of inclusion of the area in the scheme and the letter issued by the State Government has been considered by the learned trial judge in paragraph 10 of the impugned order. In any case, letters of this sort, cannot obstruct the implementation of the directions of the Hon'ble Supreme Court and this Court.

14] For all the aforesaid reasons, there is no case made out to interfere with the impugned order. The appeal is therefore liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

15] In view of dismissal of appeal, civil application does not survive and it is disposed of.

(M. S. SONAK, J.)