

Sharayu Khot.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 7695 OF 2015
WITH
CIVIL APPLICATION NO. 485 OF 2018
IN
WRIT PETITION NO. 7695 OF 2015**

Mr. Ramesh Chawla & Anr.

...Petitioners

Versus

**Mira-Bhayander Municipal Corporation
& Ors.**

...Respondents

Mr. I.K. Tripathi, i/by Mr. C.K. Tripathi, for the Petitioners.

Mr. Suryajeet P. Chavan, for the Applicant in CAW/485/18.

Mr. Mayuresh S. Lagu, for the Respondents No. 1 & 2.

Mr. A.N. Narula & Meena Bhatta, i/by Jhangiani Narula & Asso.,
for the Respondent No. 3.

**CORAM : ABHAY S. OKA AND
RIYAZ I. CHAGLA, JJ.**

DATE : 2 April 2018

ORDER :

1. Heard the learned Counsel appearing for the Petitioner. Perused the Affidavit of Shri. Deepak Digambarrao Pujari, Deputy Municipal Commissioner (Encroachment Controlling Department) of the 1st Respondent-Municipal Corporation. In paragraph 2 of the Affidavit, it is stated that the notices issued under Section 260 of the Maharashtra Municipal Corporation Act, 1949 (for short “*the said Act of 1949*”) to various persons were taken to its logical conclusion and orders of demolition of illegal structures were passed, the particulars of which have been set out in paragraph 2. Copies of the orders have been annexed at *Exh.A (colly.)* to the Affidavit. In paragraph 3, Shri. Deepak Digambarrao Pujari has stated that :

“I say that after the above orders are passed by the Respondent Corporation one said Shri. Kesarinath Ramchandra Raut instituted suit being Re. Civil Suit No. 829 of 2015 against corporation in respect of Gala No. 1, 2, 3, 4 & 5. I say that the Respondent

Corporation initially demolished the illegal unauthorised construction on 19/01/2017 however said Shri. Kesarinath Ramchandra Raut again reconstructed without any permission the present unauthorized construction. I say that the other occupants of Jaiswal Industries also instituted suit being Spl. Civil Suit No. 620 of 2015 int eh Court of Civil Judge (SD), Thane. I say that in the said suit, the trial Court has interalia passed an order of injunction against the Corporation thereby restraining the Corporation from demolition of respective Galas. The aforesaid two suits are pending. The Respondent will therefore, take appropriate action as soon as the prohibitive order against them is vacated or set aside.”

2. The submission of the learned Counsel appearing for the Petitioners is that though the interim order dated 19 August 2016 passed by the learned Joint Civil Judge, Senior Division

restrains the 1st Respondent-Municipal Corporation from acting upon the orders passed under Section 260 of the said Act of 1949 which are referred in paragraph 2 of the Affidavit, in fact, the Trial Court has been misled, as the property subject matter of the suit is not the same as the property subject matter in the said orders. However, he does not dispute that so long as the clause 2 of the order dated 19 August 2016 continues to operate, the 1st Respondent-Municipal Corporation cannot take action of demolition on the basis of the orders, which are already made.

3. There is an assurance given by the 1st Respondent that as soon as prohibitory orders are vacated, immediate action will be taken.

4. We direct the 1st Respondent-Municipal Corporation to take all possible steps to defend the suit in which the prohibitory orders have been passed. If necessary, the 1st Respondent-Municipal Corporation may consider of challenging

prohibitory orders in accordance with law.

5. In the light of the Affidavit of Shri. Deepak Digambarrao Pujari and considering the assurance given in paragraph 3 of the said Affidavit, at this stage, no further direction can be issued in this Writ Petition. By accepting the assurance contained in paragraph 3 of the said Affidavit as the assurance of 1st Respondent-Municipal Corporation and subject to what is observed above, the Writ Petition is disposed of.

6. Pending Civil Application does not survive and the same is disposed of.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]