

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1608 OF 2016
IN
NOTICE OF MOTION NO. 316 OF 2009
IN
SUIT NO. 134 OF 2009

Oyster Ship Management Pvt Ltd ...Plaintiffs
Versus
Bhavsar Construction Co Pvt Ltd & Ors ...Defendants

Mr Kiran Jain, *with Neeta Solanki, i/b Kiran Jain & Co., for the Plaintiffs.*

Mr Mayur Khandeparkar, *i/b Kunal Bhanage, for Defendants Nos. 10 & 11.*

Mr DR Shetty, *Court Receiver, is present.*

Mr AY Sakhare, **Senior Advocate**, *with RY Sirsikar & Sandeep Patil, for MCGM.*

Mr Naresh Lad, *Junior Engineer K-West Ward, MCGM, is present.*

CORAM: G.S. PATEL, J

DATED: 15th June 2018

PC:-

1. On instructions, Mr Sirsikar seeks leave to unconditionally withdraw the Notice of Motion No. 1608 of 2016 (Notice of Motion (L) No. 1819 of 2016). The Notice of Motion is dismissed as unconditionally withdrawn. There will be no order as to costs.

2. I am informed that there are 108 structures on the plot in question. There is no question of any of these structures being 'authorized' in view of the factual background to the matter which I noted in my order of 12th June 2018. By this I mean that there could not be any structure that has in a regular fashion received Municipal Corporation of Greater Mumbai's ("MCGM") development permission, i.e., commencement certificate, IOD, completion certificate and occupation certificate. This entire property has been in receivership, and when the MCGM therefore acts in accordance with law for the removal of these structures, it will be acting as an agent of the Receiver. There will thus be no question of regularizing any of these structures *in situ*. Whatever may be the MCGM policy for rehabilitation or re-accommodation of the occupants in accordance with the existing MCGM norms and policies, having regard to the applicable cut-off dates or datum lines, that policy will undoubtedly be followed; but, at the cost of repetition, no structure can be regularized on site and on this plot. If a further reason is required for this, it is that since 2nd December 2010 this has been the legal situation and the property has been in *custodia legis*. It is no answer to say that there were structures on the plot prior to the date of that order. The test is not, in this case, of the date of the order. The test is whether any of the structures were authorized in accordance with law. At best, the question of date, i.e. how long a structure has been there may result in an occupant being entitled to rehabilitation in accordance with the existing MCGM policy but nothing further.

3. Mr Khandeparkar expresses the apprehension that any action by the MCGM will result in several applications being moved before

the City Civil Court. In exercise of the Ordinary Original Civil Jurisdiction of this Court, I cannot injunct or restrain the filing of any such suit nor can I direct the City Civil Court not to entertain such applications or even to have them transferred to this Court. It goes without saying that the City Civil Court will undoubtedly exercise its discretion having regard to all circumstances, specifically the background, this order, as also the order of 12th June 2018 and all previous orders. The MCGM will be at liberty — for the MCGM is bound to be a party to such action — to bring these orders to the notice of the City Civil Court. The City Civil Court will also in hearing such application ensure that the Plaintiff is given notice and is joined as a party in view of the factual background. The consequence of receivership will follow: since the MCGM is acting as an Agent of the Court in implementing directions of this Court to remove the encroachments (as directed by Kathawalla J), I have no manner of doubt that the City Civil Court will appreciate that the Court Receiver will be a necessary party to any such suit by an occupant in respect of the MCGM's removal action.

4. Liberty to the parties to apply.
5. List the matter for compliance on 8th August 2018 at 3.00 pm.

(G. S. PATEL, J)