

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1032 OF 2018
IN
SUIT NO. 997 OF 1982

Margrate Mary Pereira & Ors	...Plaintiffs
<i>Versus</i>	
Jency Pereira & Ors	...Defendants
<i>And</i>	
The Court Receiver	...Proposed Third Party
<i>And</i>	
Municipal Corporation of Greater Mumbai	...Applicant

Mr Sanjiv A Sawant, *with Abhishek Mathkar, RY Sirsikar & DS Shingade, for the Applicant/MCGM.*
Mrs Raut, *Section Officer from the Office of Court Receiver, is present.*
An Advocate, *for MC Aboobacker, son of the original Court Receiver's agent, Haji Abdul Kadar.*

CORAM: G.S. PATEL, J
DATED: 23rd January 2019

PC:-

1. Heard.

2. The Chamber Summons is filed by the Municipal Corporation of Greater Mumbai ("MCGM") on the basis of a

communication from the Court Receiver at page 70. This is in respect of an unauthorized construction of a hotel room with brick masonry walls and asbestos cement sheet roof at AB Road, Juhu, Mumbai 400 049. It seems that the father of one MC Aboobacker, one Haji Abdul MC Kadar, was appointed as an agent of the Court Receiver in respect of this premises. He was required to pay royalty. He did so, the Court Receiver's representative tells me, until the time of his demise. Thereafter MC Aboobacker, son of Haji Abdul MC Kadar sought to continue as the agent. There is no document of agency between the Court Receiver and the original agent's son.

3. In any case, the appointment of a person as an agent of the Receiver of a premises is one thing but this cannot be used as a shield against legitimate municipal action including under Section 351 of the Municipal Corporation of Greater Mumbai Act. This is all that Mr Sawant for MCGM seeks today in the present Chamber Summons and nothing more.

4. If every appointment of a Court Receiver was to come in the way of the Municipal Corporation performing its statutory functions, nothing in the city would run. I am not in this order deciding the merits of that Section 351 action nor am I holding against Mr Aboobacker on his contentions that the Section 351 notice is unwarranted or that there is nothing indeed so serious that he needs to be evicted. All proceedings under Section 351 will continue irrespective of the appointment of the Court Receiver but will be taken strictly in accordance with law and all contentions on both sides are expressly kept open.

5. The Chamber Summons is disposed of with these observations. There will be no order as to costs.

6. In future such cases, it will not be necessary for the MCGM to file a Chamber Summons but the Court Receiver will seek an appropriate direction on a report.

(G. S. PATEL, J)