

Saif and Co. and Ors. } Petitioners
versus
Municipal Corporation of Greater } Respondents
Mumbai and Ors. }

Mr.Dharmesh Vyas with Ms.Vandana Mahadik for
the Municipal Corporation.

DATED :- SEPTEMBER 11, 2019

1. Heard both sides.

J.V.SALUNKE,PS

construction carried out is wholly illegal. The allegation appears to be that there was an existing building which was pulled down and a reconstruction was made at site without any development permission. This act means a patent illegality and therefore, when the beneficiaries of such illegality are claiming water connection, then, there is no mandate to supply it.

3. The petitioners claim that this notice under section 351 of the Mumbai Municipal Corporation Act, 1888 is admittedly the subject matter of a civil suit. The details of that suit are provided even by the Municipal Corporation. That civil suit is still pending. There is an interim order therein, by which, the Municipal Corporation is restrained from pulling down this construction. Therefore, the court is yet to determine whether the notice is legal and valid and whether the construction indeed is unauthorised and illegal.

4. We have not been shown any policy or provision of law, which is so consistent that when such are the allegations and even if they are subject matter of legal proceedings, the Municipal Corporation cannot be held to be bound to supply the water. We have been informed, in addition to today's affidavit in reply of the Municipal Corporation, that in the Ward where this building is constructed, there are 11 such buildings, which have been issued

similar notices and in relation to which, such a step has been taken.

5. We do not think that we can uphold the stand of the Municipal Corporation in this case only because of the issuance of a notice alleging that the construction is unauthorised and illegal. That notice is not allowed to be acted upon. That notice is not enforced. In fact, this notice is challenged and in legal proceedings to which the Municipal Corporation and its officials are a party. The factual assertion in this writ petition that this notice, issued by the Municipal Corporation, has been challenged by the petitioners before the civil court in Long Cause Suit No.1705 of 2018, that there was an ad-interim injunction and order of status quo therein dated 18th July, 2018, that the same was unsuccessfully challenged by respondent no.5 to this writ petition, namely, the Designated Officer of the Municipal Corporation, but this court refused to assist the Municipal Corporation, by holding that this is an ad-interim order and the main application is pending, after which, the main application is contested and an interim order is passed thereon on 30th March, 2019 restraining the Municipal Corporation from bringing down the construction, therefore, enables us to grant the reliefs as prayed. More so, when in law this step, as resorted to, cannot be

resorted to when the notice under section 351 of the Mumbai Municipal Corporation Act, 1888 is challenged and the adjudication is pending.

6. We, therefore, allow this writ petition. We direct the Municipal Corporation to restore the supply of water to the petitioners on the petitioners making a written application, paying the necessary fees and compliance with all the terms and conditions on which such water supply is restored.

7. Needless to clarify that our order does not mean that we have adjudicated upon the legality and validity of the notice under section 351 of the Mumbai Municipal Corporation Act, 1888 and all contentions of both sides in that behalf are kept open. The City Civil Court will decide the issue of the legality and validity of the notice uninfluenced by our order and directions.

8. With the aforesaid directions, the writ petition is disposed of.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)