

Arun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 2515 OF 2020
IN
SUIT NO. 823 OF 2016**

Bridget Anthony Rosario Pereira & Anr	...Applicants/ Plaintiffs
<i>Versus</i>	
Mumbai Municipal Corporation & Ors	...Defendants

**INTERIM APPLICATION NO. 3156 OF 2020
IN
SUIT NO. 823 OF 2016**

Mumbai Municipal Corporation	...Applicant
<i>In the matter between</i>	
Bridget Anthony Rosario Pereira & Anr	...Plaintiffs
<i>Versus</i>	
Mumbai Municipal Corporation & Ors	...Defendants

Mr Bhavesh Parmar, *with Deymani Shukla and Rajesh Sahani, i/b Deymani Shukla, i/b for the Plaintiff and for the Applicant in IA/2515/2020.*

Mr Rajesh Patil, *with Sagar Patil, for MCGM, for the Defendants and for the Applicant in IAL-3156/2020.*

**CORAM: G.S. PATEL, J.
DATED: 13th September 2021**

PC:-

1. This order will dispose of the two Interim Applications. Interim Application No. 2515 of 2020 is filed by the Plaintiff and Interim Application No. 3156 of 2020 is by the Defendant.

2. The Plaintiffs have been in almost nonstop litigation from 2016 to protect the roof over their head. The story of that very roof is an unusual one, as we shall presently see.

3. The Plaintiffs' case runs like this. In 1949, the then Municipality of Bandra (of which the 1st Defendant is the successor) accepted an application by the 1st Plaintiff's father, Dr Francis Noronha. That application was of 23rd September 1949. A copy of the permission of 27th December 1949 is at Exhibit "C" at page 37. What this did was to permit Dr Noronha to occupy a temporary shed at Khar. This is about 673.58 sq ft (according to the plaint) and is on CTS No 871 at 2nd Hasnabad Lane, BMC Khar Depot, Khar (West), Mumbai. He would have to bear the costs of water and power supply but he was permitted to occupy the shed after his retirement subject to paying reasonable ground rent.

4. The next document, at Exhibit "D" at page 38, is with reference to a later representation of 16th October 1973 made by Dr Noronha asking for permission to allowed to stay after retirement in the same structure or that he be allotted suitable quarters elsewhere. The Municipal Commissioner passed orders on 4th May 1974 that in view of the commitments previously made by the erstwhile

Bandra Municipality, Dr Noronha was allowed to continue to occupy, live in and maintain the shed in question after retirement, subject to payment of ground rent, but this would be treated as a vacant land tenure. The present dispute is not about the tenure or about the ground rent.

5. The 1st Plaintiff, Bridget, was born in these premises in Khar on 8th October 1952. Her father, Dr Noronha, retired from services of the Municipal Corporation on 24th November 1974. The family stayed on in the shed at Khar. The two Plaintiffs were married on 28th August 1979. Both of them lived with Dr Noronha at this place in Khar.

6. Dr Noronha died on 17th February 1981. Trouble seems to have began in 2015, when the Assistant Engineer issued a letter in the name of the Bridget's sister, who had died much earlier on 7th July 2009, asking for documents pertaining to occupation of the structure by the family. A copy of this letter is at Exhibit "I" at page 62. Given that the letters of 1949 were issued by the Ex-Bandra Municipality, the predecessor of the MCGM, and in 1974 by the MCGM itself, it is difficult to appreciate how the MCGM could have been so utterly unaware of its own records.

7. Correspondence followed. On 28th July 2015, the Assistant Commissioner issued a notice to Bridget to produce documentation within 10 days to establish her rights over the structure at Khar, failing which the premises would be demolished. A copy of this notice is at Exhibit "K" at page 66.

8. The Plaintiffs filed a Writ Petition and obtained a protective order on 11th August 2015 (Plaint, page 96), saying that the Plaintiffs could not be dispossessed on the basis of the MCGM notices without following the due process of law. On 13th August 2015, the Assistant Engineer issued a notice under Section 314 of the MCGM Act. On 14th August 2015, the Plaintiffs replied. Ultimately on 7th June 2016, the Assistant Engineer issued an order directing the Plaintiffs to vacate the premises and to accept alternate accommodation under the PAP policy. A copy of this is at Exhibit “R” at page 105.

9. I am not addressing the merits of the Suit itself today. There may be undoubtedly a lot that Mr Parmar for the Plaintiffs has to say on the conduct of the MCGM over time. The fact is that the 1st Plaintiff was born in these premises, which have been with her family since 1949 onwards. This is not something that MCGM can at all dispute. Indeed, the possession and occupancy is not disputed at all. It is evident from the 7th June 2016 notice itself, and even more so from the MCGM’s Interim Application, which seeks orders compelling the 1st Plaintiff to vacate and shift to one of the alternative premises offered by the MCGM.

10. On 8th August 2016, SJ Kathawalla J directed both parties to maintain status quo. This is the order that MCGM seeks to have vacated in its Interim Application NO. 3156 of 2020.

11. The Interim Application No. 2515 of 2020 by the Plaintiff sets out some of the history and then says that, very recently, during the

first lockdown and pandemic, on 17th July 2020, the wall constructed by the MCGM (and about which the Plaintiffs have a grievance, not the subject matter of this Interim Application) collapsed on the Plaintiffs' residential structure, substantially damaging it and making it unsafe for habitation and use without extensive repairs. There are photographs annexed showing the collapse of this wall and the resultant water logging.

12. Apparently, the MCGM needs the land on which the premises stand for a ward office. This is clear from Exhibit "A" at page 38 of MCGM's additional affidavit in its Interim Application. This is a notice dated 31st August 2020 offering alternate premises to the Plaintiffs at Malad.

13. Mr Parmar submits that firstly the Plaintiffs are not project affected persons and therefore cannot be swept in under this policy. It simply cannot be, he submits, that the MCGM could say "show me the person, and we will show you the policy". There is no 'project' that affects the Plaintiffs' structure. Whether or not a MCGM ward office is a 'project' within the meaning of the policy is debatable. Second, his submission is that what the Plaintiffs are being offered is a place at a very great distance in the north suburbs in Malad, to which they cannot relocate at this stage of their life. Third, according to him, there is a very serious dispute about the area of the alternate premises that are being offered. But most importantly, he submits, it simply cannot be that the MCGM is at liberty to resile from its assurances given to the 1st Plaintiff's family about assured length of tenure and undisturbed possession. After all,

Dr Noronha was an officer of the MCGM. He served the Municipal Corporation faithfully all his working life. It is manifestly unjust, Mr Parmar submits, that the Plaintiffs should be sought to be evicted and relocated to a great distance for no fault or default of their own.

14. The reliefs that Mr Parmar presses in the Plaintiffs Interim Application are prayer clauses (a) and (c) which read thus:

“(a) For an order directing the BMC to grant permission as sought by the Applicant vide letters dated 17th July 2020 and 20th July 2020 for repair and reconstruction of her premises damaged vide incident dated 17th July 2020.

(c) For an order allowing the applicant at her own cost and expenses to repair and reconstruct the applicant’s residential structure at the same location making it habitable and liveable for the applicant and her dog and the said cost and expenses be reimbursed by the BMC in due course.”

15. From any perspective, and purely as interim protection, these are not only eminently reasonable prayers, but are fully in consonance with the 8th August 2016 status quo order. All that is required is a restoration to the premises to their previous condition before the wall collapsed.

16. Mr Parmar points out that in fact the condition because of the wall collapse is so serious that his clients’ structure is rendered unsafe. There was very recently a theft. His clients have had to file an FIR.

17. Strictly on a without prejudice basis, I can see no difficulty in making an order in terms of prayer clauses (a) and (c). There is no conceivable prejudice caused to the MCGM by these prayers. The MCGM is not to insist on any further permission for the repairs but at the same time Plaintiffs undertake and convey through Mr Parmar that they will not carry out any further work but will only the repair and reconstruct the damaged portion as sought in prayer clause (a). This statement is also accepted as an undertaking to the Court. Whether or not the Plaintiffs are entitled to a reimbursement of these expenses will be decided at a later stage of the Suit.

18. As regards the MCGM's Interim Application No. 3156 of 2020, the reliefs are these:

“(a) This Hon'ble Court be pleased to vacate the order dated 8th August 2016 passed in Notice of Motion (L) No. 1869 of 2016 in Suit (L) No. 670 of 2016.

(b) That this Hon'ble Court be pleased to direct the Plaintiff and Philomena Maria Naronha to select any premises as or by way of alternative accommodation from the list, as submitted to the Plaintiff and Philomena Maria Naronha and/or accept the offer of allotment of alternative accommodation given by the Applicant herein to enable applicant MCGM to process necessary steps in discharge of its function.

(c) That this Hon'ble Court be pleased to direct the Plaintiff to take necessary steps to vacate the subject structure and to accept the accommodation offered to the Plaintiff and Philomena Maria Naronha by the Applicant MCGM.

(d) That this Hon'ble High Court be pleased to permit MCGM to start and initiate eviction proceeding u/s 105(b)

of MMC Act, against the Plaintiff for Plaintiff's eviction from the subject structure."

19. It is not possible to grant prayer clause (a). There is no ground made out to vacate the order of 8th August 2016. But that is being misunderstood by the MCGM. The status quo order does not and cannot prevent the MCGM from exercising its powers and taking action in accordance with law. Those rights of the MCGM are evidently unaffected by the status quo order, and the reason should be plain: no court can or will restrain a public authority from acting in accordance with law, and no order of status quo can ever be construed to so mean or even suggest.

20. Prayer clause (b) more or less defeats itself because there cannot be such a mandatory order at an interim stage at the instance of the Defendant against the Plaintiffs to shift out or to accept any offer. Not only are these are matters of volition, but I fail to see how a defendant can obtain a mandatory order in the nature of a decree against a plaintiff, and that too at an interim stage. The MCGM is at liberty to take proceedings or to adopt such steps as are available to it in law, including under the Mumbai Municipal Corporation Act, 1888.

21. For this reason, too, prayer clauses (c) and (d) sought by the MCGM are not only unnecessary but cannot be granted. Again, the MCGM is always at liberty to take such steps as are available to it under law and in accordance with law.

22. The two Interim Applications are disposed of in these terms.

23. In the facts and circumstances of the case there will be no order as to costs.

24. Mr Patil applies for the stay of this order. The request is without basis. I have only permitted repairs and reconstruction of the damaged portion, nothing more. The MCGM can have no legal right to say that a structure damaged by a collapse of a wall that the MCGM itself constructed should forever remain damaged and in ruins. That is the implication of the application for stay, and it is wholly unreasonable. The repairs permitted per se create no equities or legal entitlements in favour of the Plaintiffs. The application for stay is refused.

25. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)