

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.182 of 2022
WITH
INTERIM APPLICATION NO.1201 OF 2022
IN
APPEAL FROM ORDER NO.182 OF 2022

Rajendraprasad Ramdutt Singh & Ors .. Appellants

Versus

The Municipal Corporation of .. Respondent
Gr.Mumbai thru M/East Ward
Municipal Office, Govandi

...

Mr.V.R. Tripathi for the appellants.

Mr.Santosh Parad for the respondent MCGM.

CORAM: BHARATI DANGRE, J.

DATED : 28th MARCH, 2022

P.C:-

1 Heard Learned counsel for the appellants and learned counsel for MCGM.

2 In furtherance of the order dated 7/3/2022, the Corporation has placed on record an affidavit on 11/3/2022 sworn by the Assistant Engineer (Maintenance) Department, M/ E Ward.

In respect of the other specific direction issued in paragraph no.5 of the order dated 7/3/2022, the deponent has stated as under :-

“7 Accordingly, this office has put up the proposal along with report before D.M.C (Zone-V) with respect to the requisition of the local councilor and facts at side. As per inspection and the said report, it was learned that there was 3-4 seated common toilet block which were used by shopkeepers of ‘C’ shopping centre and same was demolished in the past. However, it was also learned that there is local demand for the reconstruction of the same. Accordingly, in the said of the proposed Welfare Centre at ‘C’ Centre, the ‘M/East’ Ward Office has proposed before D.M.C. (Zone-V) that the said Welfare Centre will be constructed along with common toilet blocks for the ‘C’ Shopping Centre and the same has been approved by D.M.C (Zone V). Hereto annexed and marked as Exhibit ‘E’ is copy of the approval of D.M.C (Zone V).

8. Further, it is necessary to mention here that on one side there is clear pedestrian access of 2.3 mtrs, earmarked as Point ‘A’ and the other access beside the substation is clear vehicular access of 4.6 mtrs, earmarked as Point ‘B’ as can be seen from satellite image and superimposed physical structures of the said location wherein the “C” Shopping Centre comprising of 11 structures can be seen. Hence, the vehicular access to ‘C’ Shopping Zcentre, as alleged by the Appellant herein, is not going to be obstructed, in any manner, whatsoever. Hereto marked as annexure as Exhibit-F colly, are copies of the said satellite image and photograph”

3 Along with the said affidavit, the satellite map reflecting the existing structures of the appellant, the location of

proposed welfare centre and the location of the sub-station is indicated.

4 My attention is invited to the plaint, wherein the plaintiffs i.e. 11 in number who claim to be in occupation of the respective premises mentioned in the cause title of the plaint and who own their shop-cum-residence, have filed Suit for injunction u/s.34 and 37 of the Specific Relief Act. The plaint consists of the following prayers

“(a)Mandatory orders and injunction of this Hon’ble Court directing the Defendants to forthwith reconstruct in its original position two toilet blocks and one bathroom at Deonar Shopping Centre Block ‘C’, near Shop No.33, Deonar Municipal Colony, Survey No.93(Part) Govandi, Mumbai 400043 as per the original plans.

(b) That the Defendant be permanently restrained by themselves and through their agents, servants and representatives from obstructing in any manner the entrance to the Plaintiffs and their family members and/or any vehicles through the places marked as (1) (2) and (3) on the sketch plan Exhibit A hereto and/or putting or allowing to put up any structure in the open space near Block ‘C’ thereby causing obstruction of Ambulance and Fire Brigade or vehicles of any nature therefrom at Deonar Municipal Shopping Centre, Survey No.93 (Part), Govandi, Mumbai 400043.

5 The plaint is accompanied by a sketch plan and what is sought by prayer clause (b) is to the effect that the defendants shall not create any obstruction to the plaintiffs or their family

members and/or any vehicles passing through the places marked as 1, 2 and 3 of the sketch map. Point no.1 is reflected at extreme southern of the shopping centre, whereas point nos.2 and 3 are located on its northern end. When this plan is super imposed against the recent satellite map produced on record along with the affidavit at Exhibit-F, it becomes clear that the plaintiffs do not want an obstruction from point no.1 to 2 and point no.2 to 3. The satellite map clearly reflect the 4.6 meter regular road at point no.b and there is huge open space lying at the western side of the shopping centre. The proposed welfare centre is located at the northern end of the 'C' shopping centre followed by a sub-station to the further north end.

The affidavit categorically has given the position in paragraph 8 and a statement is made to the effect that the vehicular access to the 'C' shopping centre is not going to be obstructed in any manner whatsoever. The aforesaid statement made on oath is accepted as an undertaking to the Court and it is made clear that if at all any sub-station is to be constructed, it shall clearly follow the requirements of installation of the sub-station as comprised in the development control and Permission Regulation 20(3), which has come into effect from 13/11/2018. The Corporation shall strictly adhere to the distance prescribed between the existing building/structure and the proposed construction of sub-station.

6 By recording as above, the AO which seek to challenge the refusal of ad-interim relief is disposed off.

Needless to state that the learned Judge while deciding the Notice of Motion shall not be influenced by the observations made as above and would decide it on it's own merits.

Since the motion is pending for a considerable time, let the same be disposed off with the assistance of the parties within a period of three months from today.

7 In view of the disposal of Appeal from Order, Interim Application No. 1201/2022 does not survive and is disposed off accordingly.

(SMT. BHARATI DANGRE, J.)