

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.298 OF 2022
ALONG WITH
INTERIM APPLICATION NO.2172 OF 2022

Akal Co-operative Housing Society]
Ltd.] ... Appellant

Vs.

The Municipal Corporation of Greater]
Mumbai & Anr.] ... Respondents

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Mr. D.S. Sakhalkar i/b Mr. J.P. Singh for the appellant.

Mr. Santosh Parad for the respondent-MCGM.

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CORAM : SMT. BHARATI DANGRE, J.

DATED : 05TH APRIL, 2022.

P.C. :-

1. Heard the learned counsel for the appellant and the learned counsel for the Corporation.
2. The appeal is filed being aggrieved by the rejection of

Notice of Motion No.30 of 2021 taken out by the plaintiff in a suit filed by the Co-operative Housing Society, assailing the letter dated 08/12/2020 issued by the Executive Engineer, Sewerage Project Department, as being illegal.

3. The notice of motion taken out by the plaintiff-Society sought an injunction on the work to be undertaken in terms of the said notice.

4. My attention is invited to the notice dated 08/12/2020 addressed to the plaintiff-Society by the Executive Engineer, Sewerage Project. The said communication categorically states as under:

“With reference to above, MCGM has undertaken the work of providing and laying 400 mm and 300 mm dia RCNP 3 Class pipe sewer from Rani Laxmibai Chowk, J.B. Nagar along Tarun Bharat road, Akal Society layout road in K/East ward. This work is Essential and Basic Infrastructural work. Contract period for the said work is of 26 months (Excluding Monsoon) from the date of commencement i.e. 06.01.2021. The said work is entrusted to M/s. Ranuja Dev Corporation.

The Chairman / Secretary and all society members are hereby requested to cooperate & co-ordinate with the MCGM and contractor's representative for the smooth progress of work.”

5. The aforesaid letter was responded to, by the Society by raising an objection, to the effect that without stating the work to be carried out, the permission cannot be granted. Further, the details of sewerage work i.e. plan showing area where the sewerage pipeline should be laid, is also sought for. In any case, no objection came to be granted by the Society with the following conditions being imposed.

“(a) The demand of declaring the internal layout road as DP road in revised DP plan of 2034 is to be withdrawn.

(b) No damage to be caused to the property of the society and persons during the process of the work.

(c) Lay sewer line at your cost and expenses.

(d) To re-do road work.”

6. Based on the aforesaid no objection received from the plaintiff-Society, the Corporation proceeded to finalize the tender process and the work was allotted to an agency. The agency was also reminded that it shall take all precautionary measures regarding the safety of the Society and complete the necessary documentary formalities. Pertinent to note that the proposed work is about laying down the sewerage line underground, having average depth of more than 2.5 mtrs. below existing ground level. The said project covers an area of 300 meters stretch, which

includes the stretch of 210 meters belonging to the Society.

7. It is clear that the Corporation undertook the said work of laying the sewerage pipeline from point (a) to point (b) and by virtue of Section 222 of the MMC Act, the Commissioner is empowered to lay down the drainage line and it is permissible for the Corporation to lay any municipal drain, through, across or under any street or any place laid out for a street after giving reasonable notice to the owner or occupier for the purpose of laying the drainage.

8. Accordingly, the notice was issued to the plaintiff-Society and a no objection was also accorded. However, it was subjected to several conditions and the plaintiff-Society is perfectly justified in putting conditions (b) to (d). However, the stand of the Society that the internal layout road is now declared as D.P. Road in the revised D.P. plan of 2034 and the condition imposed that this exercise shall be withdrawn, cannot be granted as the proposed D.P. Road in the proposed revised plan of 2034 is sanctioned in the Standing Committee, after adhering to various permissions and sanctions.

9. In the wake of the aforesaid, while rejecting the notice of motion, the Bombay City Civil Court has observed that when a work is commenced for public project, the Corporation cannot be restrained from commencing the work. However, at the same

time, the Corporation shall take all necessary steps to complete the project within the period stipulated and shall minimize the inconvenience caused to the Society. I do not notice any infirmity in the impugned order, which is upheld and appeal is dismissed.

10. In view of the dismissal of the appeal, interim application does not survive and is disposed off, as such.

[SMT. BHARATI DANGRE, J.]