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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.210 OF 2022

WITH

INTERIM APPLICATION NO.1458 OF 2022

Sangita Ramesh Kabra

.. Appellant

Versus

The Municipal Corporation of
Greater Mumbai through K-East .. Respondent
Ward Office.

ALONGWITH

APPEAL FROM ORDER NO.211 OF 2022

WITH

INTERIM APPLICATION NO.1460 OF 2022

Rupesh Dinesh Kothari, through C.A.

Dinesh Jethmal Kothari

.. Appellant

Versus

The Municipal Corporation of
Greater Mumbai through K-East .. Respondent
Ward Office.

ALONGWITH

APPEAL FROM ORDER NO.212 OF 2022

WITH

INTERIM APPLICATION NO.1461 OF 2022

Arati Sagar Vanjare

.. Appellant

Versus

The Municipal Corporation for
Greater Mumbai

.. Respondent

ALONGWITH
APPEAL FROM ORDER NO.213 OF 2022
WITH
INTERIM APPLICATION NO.1462 OF 2022

Dinesh Jayantilal Doshi

.. Appellant

Versus

The Municipal Corporation for
Greater Mumbai

.. Respondent

ALONGWITH
APPEAL FROM ORDER NO.214 OF 2022
WITH
INTERIM APPLICATION NO.1466 OF 2022

Rajendra S. Sanghavi

.. Appellant

Versus

The Municipal Corporation for
Greater Mumbai

.. Respondent

...

Ms.Shweta I. Singh for the Appellants in all the matters.

Mr.Om Suryavanshi for the Respondent/MCGM in all the matters.

...

CORAM: BHARATI DANGRE, J.

DATED : 15th MARCH, 2022

P.C:-

1. The five appeals, four of which are listed on board and one was called on the request made by the learned counsel for the appellant, since it involves the same question, are heard collectively.

2. The appeals are filed, being aggrieved by the orders dated 09/03/2022 passed by the City Civil Court at Mumbai in distinct suits filed by the appellants challenging the notices issued under Section 351 of the Mumbai Municipal Corporation Act, 1988 (for short, "the MMC Act") and the speaking orders dated 22/02/2022. In the suits, notices of motion came to be moved, seeking stay of the impugned communications and the ad-interim relief as sought in the notices of motion came to be rejected, under the impugned orders. The Corporation is directed to file reply to the draft notices of motion and the suits are now scheduled for hearing on 12/04/2022.

3. On hearing the learned counsel for the appellants and the learned counsel for the respondent, it appears that notices are issued to the appellants under Section 351 of the M.M.C. Act, where the schedule in each of the notice refers to the

following :-

“1) Unauthorized Horizontal extension in rear side open space ad-measuring 3.03 m x 2.19 m and height 3.91 m by using B.M.Wall, M.S.Angle and A.C.Sheet roof without permission of competent authority. 2) Unauthorized construction of mezzanine floor ad-measuring 9.0 m x 6.25 m and height 4.02 m by using M.S.Staircase, M.S.Angle, M.S.Plate and G.I. Sheet roof without permission of competent authority situated at Nandanvan Industrial Estate, Gala No.52, P.K.Road, Asha Nagar, Mulund (W), Mumbai 400 080.”

The schedule is followed by a sketch.

4. The learned counsel for the appellants has placed on record a compilation of documents, which is common to all the appeals and this include the inspection note dated 24/11/1988, which refer to an inspection being carried out, since it was alleged that the factory was running without valid permit. The inspection note record the following three factual aspects :-

“(1) Factory running without valid permit under Section 390 of the M.M.C. Act;

(2) Unauthorized loft is constructed;

(3) Unauthorized shed at backside of gala size approximately 30' x 15'.”

5. Apart, various annual inspection notes right from the year 2011 to 2021 are placed on record and in each of these inspection notes, there is a reference of the loft being in

existence and the learned counsel has invited my attention to the inspection note dated 31/12/1997, which record as under :-

“Visited the premises wherein Shri D.J.Doshi is present. Found carrying on the trade of metal cutting & trenching metal in licensed area with the help of electric motive power and with 15 workers. Welding of gas/electricity is carried on the premises. Constructed loft/ mezzanine floor is used for storage and office purpose. Four constructed sheds at the rear side adm. 20' x 20' & 10' x 10' size used for the activity of hand loco cutting & found carrying on the trade of cleansing of metal with one L.P.G. gas cylinder & three workers. Found kept metal parts on the premises of sheds.”

The existence of loft and shed, which were used for storage purpose i.e. trade material, at the time of inspection is common feature in all the inspection reports, which are consistent from 2011 to 2021 and the the isolated report dated 31/12/1997 to which the reference is made above.

6. The learned counsel for the Corporation would vehemently submit that the construction which is existing, as has been noticed, is a loft and not a mezzanine floor and the distinction between the two is made in the Development Control Regulations. He would also submit that the appellants will have to establish that the structures were in existence before the datum line, if as such, to be protected. His submission is, even going by the documents placed on record, they do not warrant the regularization of the structures or become a tolerable structure.

7. This argument deserves a consideration and this can

always be submitted and decided, when the notices of motion are argued. In the wake of the compilation of documents placed on record, noting the structure in form of a loft/mezzanine floor and the structure at the rear part, the learned Judge has erred in refusing the ad-interim relief.

8. The orders, therefore, deserve to be set aside and the appellants deserve a protection of the existing structures, which are indicated in the inspection notes, till the hearing of the notices of motion, which are now fixed for hearing on 12/04/2022. Upon the Corporation filing it's reply, the learned Judge shall conclude the hearing of the notices of motion as expeditiously as possible, and in any case, within a period of two weeks from the date of hearing.

9. With the aforesaid directions, appeals alongwith pending applications stand disposed off.

(SMT. BHARATI DANGRE, J.)