

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.310 OF 2022
ALONG WITH
INTERIM APPLICATION NO.2240 OF 2022

Subhash Nagar Cooperative Housing]
Society Limited.] ... Appellant

Vs.

Mumbai Municipal Corporation of]
Greater Mumbai.] ... Respondent

...

Mr. Sushil M. Shukla with Ms. Janki Sampat for the appellant.

Mr. Om Suryavanshi for the respondent-MCGM.

Mr. Ashish Dubey for respondent No.3.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 02ND MAY, 2022.

P.C. :-

1. On 26/04/2022, a direction was issued to the Corporation to place on record, an affidavit giving the details about the actual

location, where the toilet block is coming up and the need for construction of such a toilet block.

2. In response to the said direction, the Assistant Engineer (Maintenance) of the Corporation has filed an affidavit, where the following explanation is offered.

*“(c) I say and submit that these Respondents received a letter dt. 26.06.2021 from Councilor stating therein that toilet block at Subhash Nagar, Near Mangal Murti Building is in a dilapidated condition and unsafe to use and needs to be reconstructed. A Letter dtd. 05.01.2022 received from Goregaon Trimurti Welfare Society requesting the MCGM to reconstruct the above toilet block as there are around 450 to 500 families who are using this toilet blocks. Hereto annexed and marked as **Exhibit ‘A – Colly’** are letters dtd. 26.06.2021 and 05.01.2022.*

(d) There was already existing toilet block in dilapidated condition / unsafe to use and therefore it was proposed to take up the work of reconstruction as per request of local municipal Councilor and local residents of Goregaon Trimurti Welfare Society.

(e) These Respondents have started the construction of toilet blocks by issuing the Work Order by following due process law to the Contractor.”

3. Along with the said affidavit, the google map of the location and the photographs of the toilet blocks are also attached. A categorical statement is made in the said affidavit as under:

“4. I say and submit that as the proposed toilet block situated in the slum and densely populated area. Also there are already deficiency of 935 toilet seats in the same slum as per this office survey. As no open places available for new construction of toilets due to densely populated slum, it is require to reconstruct the existing toilet as and when it becomes dilapidated. Also there is a toilet in use in the same area and having 24 seats but the population using this toilet are nearly 450 to 500 family. Therefore they facing many problems and to resolve their problems it is to reconstructing this toilet block as early as possible. Hereto annexed and marked as Exhibit ‘G’ is the copy of details of deficiency of toilets in the same locality.’”

4. In the above circumstances, since the toilet block is reconstructed by the Corporation on the same place, where the earlier toilet block, which was dilapidated, was in existence, and since the land on which the new toilet block is coming up, belongs to MHADA, their no objection is also obtained on 14/01/2022 for reconstruction of the toilet block, I am not inclined to continue any interim relief, which was granted earlier.

5. In any case, the appeal was filed, being aggrieved by the rejection of the notice of motion filed by the Society in L.C. Suit No.620 of 2022 and by observing that the toilet block is very much necessary and it is ultimately the subject matter of the suit, in which the plaintiff can establish their right and, in that

contingency, if the toilet block is found to be illegal, it can be demolished. In the wake of the above, upholding the impugned order, the appeal is dismissed.

[SMT. BHARATI DANGRE, J.]