

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.335 OF 2022
WITH
INTERIM APPLICATION NO.2341 OF 2022
WITH
INTERIM APPLICATION NO.2344 OF 2022
IN
APPEAL FROM ORDER NO.335 OF 2022**

Rajesh Ramharak Kanojia and Ors. ...Appellants

Versus

Municipal Corporation of Greater
Mumbai and Ors. ...Respondents

...

Mr. Vivek Shukla i/b. M/s. Shukla and Associates for the Appellants.

Mr. Ankur Shah i/b. Mr. Jatin Shah for the Intervenor.

Mr. Dharmesh Vyas i/b. Mr. R.Y. Sirsikar, for MCGM.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 5th JULY, 2022.

P. C. :-

1. Heard finally at the stage of admission.

2. The Appellants, who shall be hereinafter referred to as the Plaintiffs, have assailed order dated 26/10/2020 whereby the learned Judge has dismissed the notice of motion in S.C. Suit No.3756 of 2020.

3. The Plaintiffs claim to be the owners of the immovable property bearing CTS No.4948, 4947 A/1, 4949, 4949/1 to 3 of village Kolekalyan, Taluka Andheri Mumbai admeasuring 1086.97 sq. mtr. The grievance of the Plaintiffs appears to be that the Respondent - Corporation has encroached upon the land under CTS No.4947 /A(part) and has constructed a road, which is not as per the directions of the Hon'ble Supreme Court. It is stated that the road has been constructed in a private land by circumventing the provisions under compulsory acquisition. The Plaintiff filed a suit for mandatory/perpetual injunction to direct the Corporation :

- A-(i) to commence the construction of access road as per the chart of the Hon'ble Supreme Court adhering to points 'ABCD' marked in the Chart;
- (ii) to restrain the Corporation from encroaching upon or carrying out construction in the suit property or entering into his land beyond ABCD access road;
- (iii) to set aside the plan provided by the MCGM and hold it to be illegal, null and void;
- (iv) to direct the Corporation to implement letter dated 12/03/2020 and 05/03/2020 for removal of the unauthorised construction in compliance with the

directions of the Hon'ble Supreme Court;

(v) to compensate the Plaintiffs by acquiring 6600 sq.ft. area out of the Suit Property as part of the 'access road'.

(B) To set aside the 'existing road' shown in the 'Final Development Plan' being illegal, null and void.

4. The notice of motion has been taken out for interim reliefs in terms of the prayers in the Suit and in addition prayer (c) to appoint an expert/ commissioner to identify boundaries of the 'access road' delineated at point ABCD, as per the plan referred to by the Hon'ble Supreme Court and to demarcate the boundaries and submit the plan and report indicating the current location/status of the MCGM 'access road'. The Plaintiffs have further prayed to stay execution of the part of the 'access road' which is beyond points 'ABCD' road.

5. Learned Judge while dismissing the notice of motion has taken note of the fact that the previous Suits being S.C. Suit No.6092 of 1993 and 4271 of 2000 filed by the Plaintiffs were dismissed by judgment dated 02/01/2003 and 16/11/2004, respectively. Being aggrieved by this, the Plaintiffs have preferred this appeal.

6. The records reveal that the Civil Suit No.6092 of 1993 seeking declaration that construction of road from CST Road to Park Bay society through Survey No.295, 10 (part) and 12 (part) CTS No.4949 is illegal, has been dismissed by the Trial Court. The subsequent Suit No.4271 of 2000 has also been dismissed. Consequently, claim of the Plaintiff with regard to road from CST to Park Bay Society through Survey No.295, 10 (part) and 12 (part) CTS No.4949 stands rejected.

7. The records reveal that the Red Rose Cooperative Housing Society had filed Writ Petition No.1740 of 2016 for directions to the Respondent Nos.1 and 2 to take measures and work to improve and repair the access road as indicated in the chart annexed to the petition. Said petition was disposed of by the Division Bench of this Court vide order dated 21/08/2017. A perusal of the judgment indicates that the Corporation had alleged that it was unable to provide draining facility on account of interruption by the Plaintiffs. Upon perusal of material placed on record particularly the judgment and order passed by the learned City Civil Court Judge in L.C. Suit No.6092 of 1993 dated 02/01/2003, the Division Bench of this Court observed that there was no injunction restraining the Corporation from discharging its statutory

duties. It was further observed that in view of dismissal of L.C. Suit No.6092 of 1993 there was no impediment for the Corporation to discharge its statutory duties. With these observations, directions were given to Respondent-Corporation to take immediate steps for providing drainage/ sewage facilities and for carrying out work of development of the road if the land on which the road is to be improved is a part of the land which was the subject matter of L.C. Suit No.6092 of 1993. In the event of any obstruction, the Corporation was given liberty to apply to the police authorities for protection and police authorities were directed to provide necessary protection to the officers of the Corporation, if such application is made by the Corporation.

8. It appears that the Corporation did not comply with the directions, which resulted in filing of contempt Petition, which came to be dismissed by order dated 06/06/2019. Said order was challenged before the Hon'ble Supreme Court in Civil Appeal No.1658 of 2020. While disposing of the said appeal, the Hon'ble Supreme Court directed the Corporation to comply with the directions given by the High Court vide order date 21/08/2017 within a period of six months and the Corporation was directed to extend to the Society all facilities including access road, drainage and sewage regardless of any objection raised

from any quarters and the Municipal Corporation shall be at liberty to remove all impediments including any unauthorised structure causing hindrance to extension of these facilities. Time line fixed by the Supreme Court was further extended by six months.

9. Learned counsel for the Respondent-Corporation states that in compliance of the directions given by the Division Bench of this Court the Corporation has constructed the access road. Grievance of the Plaintiffs is that access road is not constructed in accordance with the plan/map ABCD, which is referred to by the Hon'ble Supreme Court.

10. The records reveal that in Appeal from Order (stamp) No.95438 of 2020 this Court while declining to grant ad-interim relief, had observed that the construction of the road shall be strictly in accordance with plan/map ABCD without any deviation. In this regard it is relevant to note that the Corporation had filed a Review Petition (stamp) No.1370 of 2021 on the ground that there was no reference to the plan/map ABCD in the order passed by the Division Bench of this Court or by the Hon'ble Supreme Court. Hence, by order dated 04/02/2021 learned Single Judge reviewed the order dated 09/11/2020 by observing that there was no reference to plan ABCD in

the order dated 21/08/2019 or order dated 17/02/2020 passed by the Hon'ble Supreme Court and disposed of the review petition by observing that the Corporation shall construct the road as per the directions of the Division Bench of this Court and order of the Hon'ble Supreme Court.

11. Mr. Hrishikesh Pawar, Assistant Engineer, (Maintenance) had made a statement before the Trial Court that MCGM would follow the directions given in Writ Petitioner 1740 of 2016 and the order of the Supreme Court in Civil Appeal No.1658 of 2020. Learned Judge held that the appointment of the Commissioner was not necessary in view of the said statement. Learned counsel for the Corporation, under instructions states that the directions given by the Hon'ble Supreme Court and the Division Bench of this Court have been complied with without any deviation. Prima facie, apart from the bare statement of the Plaintiff there is no material on record to indicate that the Corporation has encroached in the Plaintiff's property. Under the circumstances, no case is made out for appointment of Commissioner. I find no reason to interfere with the impugned order. Hence, the Appeal stands dismissed.

12. Pending application (s), if any, stand (s) disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

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