

Amol

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 3666 OF 2022
IN
APPEAL (L) NO. 25374 OF 2022
IN
INTERIM APPLICATION (L) NO. 5520 OF 2022
WITH
INTERIM APPLICATION NO. 1568 OF 2020
WITH
NOTICE OF MOTION NO. 2534 OF 2019
IN
SUIT NO. 1359 OF 2019**

Maurice Fernandes alias Maurice Lawrence Fernandes	...Applicant
<i>In the matter between</i>	
Maurice Fernandes alias Maurice Lawrence Fernandes	...Appellant
<i>Versus</i>	
David Royd Fernandes & Ors	...Respondents

Mr Rohaan Cama, i/b Denzil D'Mello, for the Applicant/Appellant.

**Mr Vagish Mishra, Bhushan Bankar, i/b M/s Troy Legal for
Respondents Nos. 1 to 3.**

**Mr Atul Rajadhyaksha, Senior Advocate, with Akhilesh Dubey,
Amit Dubey, Uttam Dubey, Rajuram Kuleriya, Varad Dubey &
Yash Awalkanthe, i/b Law Counsellors, for Respondent No. 6.**

Ms Pooja Yadav, *for Respondents Nos. 7 to 12-MCGM.*

Mr Kevic Setalvad, Senior Advocate, *with Dharmesh Joshi & Awaiz Ahmedji, i/b TD Joshi & Associates, for the Respondents Nos. 14 to 17.*

**CORAM G.S. Patel &
 Gauri Godse, JJ.**

DATED: 18th August 2022

PC:-

1. The only apprehension expressed by Mr Cama for the Appellants is in regard to paragraph 9 of the impugned order. Here, the learned single Judge said that if the structural stability certificate from a structural engineer registered with the MCGM indicated to the satisfaction of the Court that the suit property required development, then the application of the original Defendant No. 6, the developer, for commencing redevelopment ‘*will be granted*’. Mr. Cama expresses an apprehension that the result will be a foregone conclusion the moment a structural stability report is submitted.

2. This is incorrect. Paragraph 9 also says that the Court will need to be satisfied that the suit property requires to be developed. The words ‘will be granted’ cannot be read out of context and cannot attach only to the mere production of a structural stability report. It stands to reason that if the court is satisfied that the building requires development then the Court indeed will make an appropriate order. It hardly needs clarification that while considering the report and arriving at its satisfaction the Court will undoubtedly hear all the sides, all contentions presently being open.

3. The Structural stability report is to be prepared by a licensed architect engaged by Defendant No. 6. We are told that the report has been filed. A copy is to be served on the Appellant's Advocate, if not already done.

4. The impugned order requires no interference beyond this clarification.

5. The Appeal is disposed of.

6. We are told that the matter is on 23rd August 2022 on the Supplementary Board before the learned single Judge and the Appellant is keen to go on. So noted.

(Gauri Godse, J)

(G. S. Patel, J)