

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 109 OF 2023
WITH
INTERIM APPLICATION NO. 1413 OF 2023

Sanjay Sushil Bhosale

... Appellant/
Applicant

Versus

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

Mr. Sharad K. Bhosle for the appellant/applicant.

Ms. Smita Tondwalkar for the respondent/MCGM.

Mr. Anandrao Pawar, Sub Engineer (Building Proposal) Department,
Vikhroli and Mr. Dharmaraj Davane, Sub Engineer (B & F)
Department M/E Ward present.

CORAM: G. S. KULKARNI, J.
DATED: 16 February, 2023

P.C.

1. Heard Mr. Bhosale, learned counsel for the appellant and Ms. Tondwalkar, learned counsel for the respondent/MCGM.
2. By this appeal, the appellant/plaintiff has assailed an order dated 18 January, 2022 passed by the learned Judge of the City Civil Court at Greater Mumbai whereby Notice of Motion No. 1035 of 2020 in L.C. Suit No. 531 of 2020 filed by the appellant/plaintiff has been rejected.

3. The subject matter of the suit is a challenge to a notice issued by the Municipal Corporation under section 53(1) of Maharashtra Regional Town Planning Act (for short “**MRTP Act**”). The notice was responded by the appellant/plaintiff and a speaking order dated 18 January, 2020 on the same was passed by the Designated Officer of the Municipal Corporation. Perusal of notice under section 53(1) of MRTP Act would indicate that what has been objected is to an unauthorized development, which is described under the Schedule along with a sketch. It is quite substantial and beyond an ordinary imagination. The schedule records that the appellant/plaintiff shall restore the premises as per the last approved plan, i.e., u/n. CE/6022/BPES/AM dated 29 October, 2010 and restore parking area at the first floor by removing 23 number of rooms, indicated in red colour on the sketch. Further, the said notice issued under section 53(1) offered an option to the appellant/plaintiff. The first option is to restore the premises as per the originally approved plans and the second option is to permit the appellant/plaintiff to apply under section 44 of the MRTP Act for retention of the said work before the Competent Authority/Executive Engineer, Building Proposal, within one month from the receipt of said notice. It appears from the record that in the past, regularization application, as permitted by the impugned notice for retention of the unauthorized work was made by the appellant/plaintiff. However, as seen from the affidavit filed on behalf of the Municipal

Corporation to which a reference has been made in the earlier order, (in paragraph 8 of the affidavit) it is stated that the appellant/plaintiff had submitted proposal for regularization of addition/alteration on 3 April, 2019, which was rejected by the Building Proposal Department of the MCGM on 8 April, 2019. It is stated that again the Architect had submitted the same proposal on 20 December, 2019 and the same was again rejected on the very same day. It was further submitted that again an application was made on 10 January 2023 and the same was again rejected by MCGM on 22 January, 2023. Thus, what is sought to be contended by the MCGM is that repeatedly applications were made for regularization and/or retention of the said structures and the same have been rejected. As to what is the nature of such rejection can be discussed hereunder.

4. Mr. Bhosale responding to paragraph 8 of the reply affidavit has drawn the Court's attention to rejoinder affidavit as filed on behalf of the appellant/plaintiff, to submit that the rejection as spoken by the Municipal Corporation in paragraph 8 is not a rejection on merits, as it is a computer generated rejection on deficiency of certain documents. His contention is that considering the last such rejection, the Municipal Corporation has generated a 'Further Particular Letter'(FPA), addressed to the Architect of the appellant/plaintiff. The said letter is annexed to the affidavit filed on behalf of

the Municipal Corporation at Page 458. The said letter has listed 16 items, which are required to be complied by the appellant/plaintiff so that all these documents are on record and appropriate decision on the same can be taken by the Competent Officer/Executive Engineer of the Municipal Corporation, on the retention/regularization application of the appellant/plaintiff.

5. Mr. Bhosale, on instructions, has submitted that such compliances by furnishing all the particulars have been made by the Architect of the appellant/plaintiff. He says so referring to a chart which is annexed to the rejoinder affidavit at Page 480. He submits that almost all the compliances are submitted and there is a likelihood that one or two compliances are remaining which would also be completed within one week from today. Statement of Mr. Bhosale is accepted.

6. It is quite significant and as rightly pointed out on behalf of the Municipal Corporation that the appellant/plaintiff is repeatedly making proposals, however, complete proposals are not being made. Under the grab of a regularization proposal the unauthorized construction is sought to be used and or protected by the appellant/plaintiff. Making such proposals for regularization cannot be a continuous and an ongoing process. The appellant/plaintiff also needs to be serious and if he is really interested in pursuing such application. Thus, in the facts and circumstances of the case, as a

matter of last opportunity, the appellant is permitted to comply with all the requirements to make his proposal effective and realistic. Let all compliances in that regard be achieved by the appellant/plaintiff within a period of ten days from today. The Competent officer of the Municipal Corporation shall take a decision on the said proposal of the appellant/plaintiff in accordance with law within ten days of the complete documents being submitted by the appellant/plaintiff as observed hereinabove.

7. It is clear from the notice of the Municipal Corporation, that the unauthorized construction as undertaken by the appellant/ plaintiff and as objected by the Municipal Corporation is of a substantial nature. It appears that large parking area on the first floor has been converted by the appellant/plaintiff into 23 rooms which are being used as a residential hotel. This is certainly a brazen illegality as rightly noticed by the officers of the Corporation in issuing the notice in question. It was certainly not permissible for the appellant/plaintiff to undertake such large scale commercial activity and that too in an unauthorized manner. Thus, any indulgence to permit continuation of such activity would be against the tenets of law. The Court cannot pass an order which would compound any illegality and that too when the nature of the objected unauthorized construction is admitted on the part of the appellant/plaintiff, also by submitting the retention application.

8. Thus, in the above circumstances, the appellant/plaintiff is directed to forthwith cease and desist from using 23 rooms on the first floor of the premises as set out in the schedule to the notice from being used for any purpose whatsoever. Additionally the Court Receiver, High Court, Mumbai is appointed as Receiver in respect of 23 rooms, who shall immediately take action to seal these rooms so that till the application for regularization is decided, they are not put to any commercial use. This more particularly as it may not be within the control of the Corporation to monitor the illegal use of these 23 rooms by the appellant/plaintiff till the regularization application is decided and any user of these illegal rooms by the appellant/plaintiff would be a direct breach of the provisions of law.

9. There is also an office on the first floor admeasuring 115 sq. mtrs., which according to the Municipal Corporation is also part of the first floor parking area and which is also unauthorized. However, Mr. Bhosale submits that regularization of the office is also subject matter of the application for regularization, as filed by the appellant/plaintiff. Mr. Bhosale would however contend that at the most, the office may be permitted to be used, which according to him, comprises of two cabins. Mr. Bhosale is agreeable that 23 rooms excluding the office cabins can be sealed and Court Receiver can take possession. Thus, only as a matter of indulgence and keeping open all

contentions of the appellant/plaintiff as also the Municipal Corporation and only as a stop-gap arrangement, the appellant/plaintiff is permitted to use two cabins as office, as it is stated that there are staff members of appellant/plaintiff who are required to utilize the office premises.

10. The above discussion clearly show that there is no dispute that the objected construction is an unauthorized construction and considering the nature of unauthorized construction, the learned trial Judge has rightly passed the impugned order taking into account the rival contentions and the materials as placed on record, observing that a prima face case was not made out by the appellant/plaintiff for any temporary injunction to be granted.

11. In the lights of the above discussion, the Appeal from Order is accordingly disposed of by the following order:

- (i) The appellant/plaintiff shall make all the deficit compliances in regard to the regularization application as submitted to the Municipal Corporation, within a period of 10 days from today. There shall not be any further extension in any manner whatsoever, as since 2019 the appellant's applications are rejected;

(ii) The Court Receiver, High Court, Bombay, is appointed as a receiver to seal the unauthorized rooms (except two office cabins) as described in the Schedule to the notice issued under section 53(1) of the MRTP Act (Page 171 of Paper book). A better copy with the sketch shall be made available to the Court Receiver. The Court Receiver is directed to hold a meeting on 17 February, 2023 at 3.00 p.m., which be attended by the concerned officers of the Municipal Corporation as also the representatives of the appellant/plaintiff to comply the present directions. The rooms so sealed shall remain in the lock and seal of the Court Receiver and shall be subject to the further orders to be passed by this Court on the decision to be taken by the Municipal Corporation on the regularization proposal of the appellant/plaintiff.

(iii) The appellant/plaintiff is directed to deposit in the office of the Court Receiver an amount of Rs.50,000/- as an advance for fees, expenses etc which may be incurred by the Court Receiver.

(iv) The Court Receiver is permitted to take Police help from the local police station in the vicinity, which is either the Chembur or Govandi Police Station. The officer in-charge of the concerned Police Station shall provide adequate help to the Court Receiver to execute the present order.

(v) The Sheristedar of this Court shall inform the Office of the Court Receiver of the present order for further appropriate steps to be taken.

(vi) The parties shall cooperate with the Court Receiver to execute the order at the site, which shall be at 3 p.m. on 17 February, 2023. In the event, the appellant/plaintiff is not cooperating, the Court Receiver is permitted to take forcible action and seal the objected premises.

(vii) A compliance report be made by the Court Receiver before this Court on 20 February, 2023 at 2.30 p.m.

(viii) In the meantime, the Municipal Corporation shall proceed to decide the regularization application of the appellant in accordance with law within a period of 10 days from the complete compliance of the deficiencies by the appellant/plaintiff as observed above.

(ix) In the light of the above directions, no interference is called for in the impugned order. In the event, the regularization application of the appellant/plaintiff fails, the Municipal Corporation is permitted to proceed to take further appropriate action in accordance with law.

12. Appeal from Order is disposed of in the above terms, however, subject to the above observations.

13. Stand over to **20 February, 2023 at 2.30 p.m** for compliance.

14. Parties to act on the authenticated copy of this order.

G. S. KULKARNI, J