

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

**APPEAL FROM ORDER NO.268 OF 2019  
WITH  
CAA/317/2019 IN AO/268/2019**

Sakuntala Gurusharan Barai and Anr. ... Appellants  
Versus  
The Municipal Corporation of Greater  
Mumbai And Ors. ... Respondents  
...

**Mr. P.J. Thorat**, with Mr. J.S. Yadav i/b Mr. Bholaprasad Shukla for Appellants.

**Mr. Dharmesh Vyas with Ms. Smita V. Tondwalkar**, for Respondent No.1-MCGM.

Mr. Prakash Mhatre, Sub Engineer for MCGM present in Court.  
...

**CORAM : SANDEEP V. MARNE, J.  
DATE : 29 NOVEMBER 2023.**

**P. C.:**

. By this Appeal Appellants challenge order dated 26 February 2019 passed by the City Civil Court rejecting Notice of Motion No.2489 of 2018 filed by the Plaintiffs for grant of temporary injunction to restrain the Municipal Corporation from acting on the notice dated 13 April 2016 issued under the provisions of section 314 of the Mumbai Municipal Corporation Act, 1888 (**MMC Act**).

2. I have heard Mr. Thorat, the learned Counsel appearing for the Appellants and Mr. Vyas, the learned Counsel appearing for the Respondent-Municipal Corporation.

3 Perusal of the speaking order passed by the Assistant Municipal Commissioner on 12 June 2018 would indicate that the following findings are recorded:

“To treat the structure authorized your structure must reflect on C.T.S. plan or approved plan of MCGM, also you must have proof of structure prior to 1962 in Non-slum area & prior to 01.01.2000 in Municipal land. It is clearly seen from the photographs available with office that you have constructed/erected stall/structure on developed footpath. You have not submitted any of the document as per Govt. Resolution passed u/no. शासन निर्णय क्र.झोपुधो-1001/प्र.क्र.125/14/झो.प.सु-1/ मंजालय, मुंबई दि.16.05.2015, moreover you have erected structure on Municipal land i.e. on footpath & carrying out the activity of cooking & hawking at the said place. As per circular issued by Municipal Commissioner dt.29.09.2015 no structure allowed on footpath except those possesses license u/s 313 of MMC Act. & you does not have license u/s.313 of MMC Act. Therefore your structure is treated as un-authorized & liable for demolition.”

4 Thus the Assistant Municipal Commissioner has recorded a categorical finding that the notice structure is erected on the Municipal land. It is further recorded that the structure which has been in existence prior to 1 January 2000 on a Municipal land can be treated as authorized structure. Plaintiffs have relied upon photopass issued in pursuance of

survey conducted in the year 1976, which prima facie indicates existence of the suit structure prior to 1 January 2000. Since the Plaintiffs demonstrated existence of the suit structure prior to 1 January 2000 it is incomprehensible as to how the Assistant Municipal Commissioner could have come to conclusion that the structure is unauthorized.

5           Mr. Vyas is at pains to invite my attention to the circular dated 15 July 2000 issued by the State Government. According to him all the photopasses issued prior to the year 2000 were cancelled by circular dated 15 July 2000. According to him since the photopass relied upon by the Plaintiffs is already cancelled, the same cannot be read for any purposes. The City Civil Court also appears to have placed reliance on the circular dated 15 July 2000 for accepting the contentions raised on behalf of the Municipal Corporation that the photopass issued to the Plaintiffs has already been cancelled.

6           Prima facie it appears that all the photopasses issued prior to 15 July 2000 were directed to be cancelled for the purpose of conduct of fresh survey in the year 2000. Issuance of photopass in respect of particular structure may entitle an occupier for grant of permanent alternate accommodation. In the suit filed by the Plaintiffs, the issue of grant of permanent alternate accommodation is not involved. Plaintiffs need to only prove existence of suit structure prior to 1 January 2000 for

the purpose of defending the impugned notice issued by the Municipal Corporation. In my view, prima facie material is shown by the Plaintiffs to show the existence of the structure since conduct of survey in the year 1976.

7           Another factor relevant, which appears to have been ignored by the City Civil Court, is that the Municipal Corporation itself has issued a license to the Plaintiffs under the provisions of section 313(1)(b) (c) of the MMC Act on 8 July 2016. No doubt the license is issued after issuance of impugned notice dated 13 April 2016. However, there appears to be a license in favour of the Plaintiffs under the provisions of section 313 of the MMC Act. Once license under section 313 of the MMC Act is issued, action under the provisions of section 314 of the MMC Act cannot be initiated. This aspect appears to have been glossed over by the City Civil Court.

8           It is Mr. Vyas's contention that the Plaintiffs are misusing the licenses issued to them by unauthorizedly indulging in cooking activities and by also utilizing extra area over and above the one in respect of which the license is issued. If this is the case, it would be open to the Municipal Corporation to take appropriate action if it notices violation of any of the conditions of the license.

9           In my view, therefore, prima facie case is made out by the Plaintiffs for grant of interim injunction.

10           Accordingly, the Appeal succeeds. Order dated 26 February 2019 passed by the City Civil Court is set aside. The Respondent Municipal Corporation is restrained from acting on the notice dated 13 April 2016 and/or speaking order dated 12 June 2018 during pendency of the suit. Needless to observe that City Civil Court shall not be influenced by any of the observations made in the present order while deciding the suit. Considering the fact that the notice structure is located in a busy area on a footpath, the City Civil Court shall make an endeavour to decide the suit in an expeditious manner.

**SANDEEP V. MARNE, J.**