

notice under Section 299 of the Mumbai Municipal Corporation Act, 1988 to acquire 9.55 Mtrs. area purportedly falling within the regular road line.

4. When the appeal was listed before the Court, on 21st March, 2023, a grievance was made on behalf of the appellant that despite notice having been given to the respondent – Corporation about the interim application being moved in this appeal against refusal of ad-interim relief, respondent Corporation has demolished the compound wall and the security cabin.

5. Thereupon an affidavit-in-reply was filed by the respondent on 3rd April, 2023. It was *inter alia* contended that respondent has already taken action in respect of certain land, not occupied by the building, by demolishing the ancillary structures i.e. compound wall, which was causing obstruction to the road widening project of Sant Dnyaneshwar Marg. The said structure was demolished on 23rd March, 2023 after following due process of law.

6. In view of the aforesaid statement, the respondent Corporation was directed to maintain *status quo* as regards the suit property.

7. The appellant has annexed the photographs to bolster up the contention that the structures, which were demolished on 23rd March, 2023, formed the part of the building and the area which the respondent Corporation intends to lay road over contains sewage water drainage chamber and storm water drainage chamber.

8. It is submitted on behalf of the appellant that the security cabin which has been demolished by the respondent and the aforesaid tanks form part of the building and, thus, the land covered by the said structure and tanks could not have been acquired under Section 299 of the Act, 1888. Reliance is placed on a judgment of the Supreme Court in the case of *Indian City Properties Limited and another vs. Municipal Corporation of Grater Mumbai and another*¹ to lend support to the submission that the said structures render the area, which is sought to be acquired for road widening, occupied by the building.

9. The learned Counsel for the MCGM contests this position.

10. In the case of *Indian City Properties Limited* (supra) it was enunciated that in terms of Section 299 if the land is occupied by a building it is outside the scope of Section 299; but if there are only structures external to a building, action may be taken

1 (2005) 6 SCC 417.

under Section 299 by the Corporation to take possession of the land and demolish the structure.

11. The Supreme Court further expounded the import of Section 299 as under:

“19. The word “structure” is used as a generic term so that while all buildings may be structures, all structures are not buildings. That structure which is not a building and is a platform, verandah, step or *some other such structure* external to a building may be taken over by the Commissioner under Section 299(1) if it is within the regular line of the street. The words “some other such” must be construed as structures similar or like platform, verandah and step. The words must be read *ejusdem generis* with the preceding words wince the word “such” means “of the type previously *mentioned* (see *Concise Oxford English Dictionary (10th Edn.)*). The word “other” has also been held to indicate that it must be construed *ejusdem generis*. The underlying characteristic of platforms, verandahs and steps is that they are not independent structures and are external to a building, that is they are attached to the outside and form an inessential part of a building. In our opinion, therefore in order to be a building for the purpose of Section 299 the structure would have to be an independent, permanent structure. Thus, there is no repugnancy if one were to read the definition of building and Section 299 and in our opinion the word “building” has been used in Section 299 in the sense defined in Section 3(s).”

12. It is imperative to note that the impugned order was passed at an ad-interim stage. The question as to whether the structures which have been demolished and which are stated to exist in area, which is sought to be acquired for road widening, constitute structures occupied by the building or they were/are independent structures external to the building, is required to be determined by the trial court on the basis of the pleadings and material on record. It is essentially a fact finding exercise.

It would, therefore, be expedient that the Notice of Motion is decided by the City Civil Court after providing an effective opportunity of hearing to the parties.

13. Mr. Thorat, the learned Counsel for the appellant, submits that in view of the subsequent developments, the plaintiff would be required to amend the plaint to make appropriate averments and also seek additional reliefs.

14. The appeal thus stands disposed with liberty to the appellant – plaintiff to take out an appropriate proceeding to amend the plaint.

15. In the event such a proceeding is taken out, the City Civil Court shall decide the same in accordance with law.

16. The Notice of Motion be also decided on its own merits and in accordance with law after providing an opportunity to the respondent – defendant to meet the case, to be set up by the plaintiff by way of amendment.

17. In the meanwhile, till the decision of the Notice of Motion the *status quo* ordered to be maintained by this Court shall continue to operate.

18. The learned Judge, City Civil Court, is requested to decide the Notice of Motion as expeditiously as possible.

19. In view of disposal of the appeal, interim applications do not survive and stand disposed.

[N. J. JAMADAR, J.]