

Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1856 OF 2019

St Blaise Church & Anr ...Petitioners
Versus
The Municipal Corporation of Greater Mumbai ...Respondents
& Ors

Mr Sanjeel Kadam, *with Sohan Salvi, for the Petitioner.*
Mr Atul Damle, **Senior Advocate**, *with Pooja Yadav, for the*
Respondent-MCGM.
Mr Hemant Haryan, **AGP**, *for the Respondent-State.*
Mr Harinder Toor, *with MS Dehlvi, i/b Dehlvi & Co, for Respondent*
Nos 8 to 10.

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 26th October 2023

PC:-

1. In our order of 25th August 2023, we had outlined the dispute between the parties. The order reads thus:

“1. The 2nd Petitioner is the vicar of the 1st Petitioner-Church. That is a religious trust duly registered. It has a very old church going back five centuries. Its parish covers a large area including Vile Parle, Juhu, Jogeshwari, Oshiwara, Four Bungalows and Versova all in Andheri Taluka. Some distance, though not abutting, the church is a plot of land,

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CTS No. 21. This seems to lie to the west of the Western Railway line and to the east of Swami Vivekananda Road. But Plot No. 21 does not have frontage on SV road. To the north and the south are other plots and they are fully occupied. To the west of Plot 21 is Plot 22 which is owned by Respondent Nos. 8 to 13, the Halai family and here the Halai family has wood shops.

2. Dr Chandrachud for the Petitioner says that there was traditionally a right-of-way (“**RoW**”) or easementary access of some kind from SV road to the cemetery. Necessarily, and as we see from a page annexed to the affidavit dated 15th June 2023 filed by Respondent Nos. 1 to 5, that the claimed RoW runs through a part of the Halai’s plot CTS No 22. A different sketch map seems to indicate that this claimed RoW is along the periphery or boundary of the Halai’s plot CTS No 22, but we are not concerned with that specific alignment.

3. Dr Chandrachud’s case in the petition is simply that the law demands that no property can be allowed to be landlocked. The Municipal Corporation, the public authority, must ensure access to the Petitioners’ plot since both these plots are in a municipal area. It is not simply a matter of claiming an easementary right as might be done in a civil suit. Where land and access are controlled and regulated by Municipal Corporation and the Municipal Corporation is the planning authority, there is a statutory requirement that each plot holder has reasonable access to the land.

4. Mr. Toor appears for the Halais. We are leaving aside for the moment any submissions he may have to make about whether the cemetery is or is not authorised, legal or recognised in Municipal law. *Prima facie*, we do not see how as Respondents to the Petition the Halais have the right to raise such a contention, but we will address that to the

extent necessary at a later stage. We leave contentions open for today.

5. Mr Damle for the Municipal Corporation points out that not everything is as it should be on the Halai's plot CTS No 22. Section 351 notices have been issued under the Mumbai Municipal Corporation Act, 1888 ("**MMC Act**") to the Halais. These have been challenged by the Halais in Suit No. 676 of 2022 in the City Civil Court, and there is an ad interim order dated 22nd March 2022. The result of that is that the MCGM cannot, Mr Damle submits, clear the land to provide the access although the sketch plan annexed to the MCGM map and which we have referred to earlier shows a planned role in pink bars that runs roughly in a south-east to north-west direction parallel to the railway lines and to the SV Road alignment and seems to cut through a portion of the Halai's plot CTS No 22. If the ad interim order is vacated, Mr Damle submits, then the MCGM should be able to provide some access to the Petitioners' plot CTS No 21.

6. That matter is before the City Civil Court today. He therefore submits that the Writ Petition should be stood over by a week or so till a clearer picture emerges.

7. We note that there is an order of 2nd January 2020 in this very Writ Petition. On that date, the Corporation said that it was examining some documents submitted by Respondent Nos. 8 to 10 (the Halais) and would then decide whether a notice already issued under Section 351 ought to be proceeded with. Obviously, the Corporation proceeded with the Section 351 notice and hence the Halais' suit. We really fail to see how, in view of this, the Petitioners could have been excluded from the City Civil Court suit. After all this is not just a matter of a Section 351 compliance of an authorised or unauthorised structure but a consequential

effect on the present Petitioners and the access to their land.

8. In any case, that application to the City Civil Court will proceed on merits. We will consider the rival submissions after we have an update as to the progress of that Interim Application before the City Civil Court. We request the learned Judge of the City Civil Court not to adjourn the matter and to dispose of the interim application on a priority basis.

9. List the matter on 7th September 2023.”

2. We are now told that the private Respondents, the Halais, have obtained an order dated 6th September 2023 from the City Civil Court against the Municipal Corporation of Greater Mumbai (“**MCGM**”) from acting in furtherance of its notices under Section 351 of the Mumbai Municipal Corporation Act (“**MMC Act**”).

3. Mr Damle for the MCGM states that the necessary steps will have now to be taken inter alia under Section 291 of the MMC Act and, also, in furtherance of a proposal by the then Assistant Municipal Commissioner under that section. We cannot compel the MCGM to act in a particular manner. The process in accordance with law will have to followed. We can only direct the MCGM to do this as expeditiously as possible and within the time frames permitted by law and subject to all necessary compliances.

4. There are evidently disputed questions of fact including as to existing access, whether the Petitioners had previous access, whether this was surrendered and thus resulted in the Petitioners’ access to the cemetery plot in question being blocked as a result of

its own actions (as Mr Toor contends) and whether the Petitioners can compel the MCGM to create an easementary right over privately held land. Mr Toor disputes that there was ever any access through the Halais' land and maintains that the only access was from an adjacent Plot No 23. That access was apparently surrendered by the Petitioners in 1992. There is now a compound wall. The private Respondents represented by Mr Toor have nothing to say in regard to the Petitioners resuming access from Plot No 23 as was earlier being done, but this is not a concession for they also maintain that the cemetery itself is not authorised (as previously noted)

5. In view of this, we do not see how we can issue any writ in this Petition. We dispose of the Petition with these observations including the direction to the MCGM to act as expeditiously as possible and also reserving to the Petitioners the liberty, if so advised, to adopt appropriate proceedings in a Court of competent civil jurisdiction.

6. The Petition is disposed of in these terms. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)