

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 69 OF 2024
WITH
INTERIM APPLICATION NO.2116 OF 2024
IN
APPEAL FROM ORDER NO. 69 OF 2024

Joseph Dsouza Thr. POA. Mr.
Shaukat Ali Abdul Karim Shaikh ...Appellant/Applicant
vs.
Assistant Engineer (Maintenance)
MCGM And Others ...Respondents

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Mr Sagar Batavia, for the Appellant.

Ms Smita Tondwalkar, for Respondent/BMC.

Mr Yogesh Patil, i/b. Vijay D. Patil, for Respondent No.4/SRA.

Mr A.A. Siddiqui, i/b. A.A. Siddiqui & Associates, for the Intervenor.

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CORAM : R.N. LADDHA, J.

DATE : 4 APRIL 2024

P.C. :

. Heard the learned Counsel for the parties.

2. Aggrieved by an order dated 6 October 2023 passed in

L.C. Suit No.2634 of 2023 by the learned City Civil Court at Dindoshi, Mumbai, the appellant is before this Court. A perusal of the record reveals that the respondent Corporation had issued a notice dated 28 July 2022 to the appellant to produce certain documents to prove his eligibility for alternate rehabilitation given the road widening. The appellant's advocate through a letter dated 1 August 2022 requested the respondent Corporation to desist from implementing the road widening project as the slum scheme was being implemented. Thereafter, the respondent Corporation issued a public notice on 3 February 2023, calling upon the stakeholders to submit their objections to the road widening, if any, or to submit necessary documents within 15 days. Along with the said notice, a draft Annexure-II was also published, wherein the appellant's structure was shown as eligible. Subsequently, on 4 August 2023, a similar notice with the draft Annexure-II was published and required the affected persons to place on record the necessary documents.

3. It is evident from the record that the appellant was time and again called upon to place on record the documentary evidence to be eligible for rehabilitation or place on record his objections to the proposed road widening. These notices required the appellant to submit the documents before the respondent Corporation.

4. It is the claim of the appellant that the respondent Corporation should not proceed with the DP road widening because

the SRA Scheme is in progress. The record shows that in the order dated 5 October 2022 passed by the Division Bench of this Court in Writ Petition (L) No.25295 of 2023, the Division Bench has specifically observed in paragraphs 12 and 13 as follows:

“12. However, in the meantime, and without in any way exempting the Petitioners from their obligations to construct and hand over the DP Road, the MCGM is directed to consider all pending applications filed by the Petitioners for additional permissions other than those that are related to this portion of the DP Road. This seems to us necessary because the entire slum project cannot be further delayed only on account of the delay in clearing the site marked “A”. After all, we must bear in mind that there are the interests of other eligible slum dwellers that are to be kept in mind. There is of course the question of an ongoing obligation to pay transit rent, but perhaps more importantly, the provision of much awaited rehab tenements is of urgency and importance and should not be allowed to be delayed or suffered only on account of this DP Road requirement. Equally important is the fact that the DP Road would conceivably ease some of the traffic congestion.

13. It is clarified by both sides that the portion under the plot marked “A” on the sketch plan is not only to be cleared by the MCGM but the development of that stretch of the Road is to be done by whichever contractor the MCGM appoints. The completion of the DP Road by the Petitioners is for the remainder, i.e., to the north of the plot marked “A” and any portion thereafter on the southern side as well. To further clarify, the Petitioners are required to construct on CTS Nos. 9A, 9A/1-57 and 123A of village Bandongri, Malad, Mumbai for the purposes of the DP Road. This road starts from CTS Nos. 123A/1, 123A/2, 127 and 128. It is therefore clear that the DP Road on the portion that is covered by the triangular area shown at the plan at page 27 and marked as “A” is to be constructed not by the Petitioners but by the MCGM.”

5. In light of the above, this Court is not inclined to pass any order in favour of the appellant. The appeal stands dismissed. As a sequel, the pending application also stands disposed of.

(R.N. LADDHA, J.)