



Pradnya

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2083 OF 2024

1. **AESTEIRON STEELS LLP,**
A limited Liability Partnership Having
its registered address at 9/A, 9th Floor,
Mehta Mahal, Padamkar L Khandke
Marg, Mathew Road, Opera House,
Girgaon, Mumbai - 400004

...PETITIONER

~ VERSUS ~

1. **MUNICIPAL CORPORATION OF
GREATER MUMBAI & ORS.,**
Brihanmumbai Mahanagar Palika
Mahapalika Marg, Opp CST
Mumbai - 400001
2. **THE EXECUTIVE ENGINEER
(BUILDING AND FACTORY),**
D Ward, Brihanmumbai Mahanagar
Palika Jobanputra Compound, Nana
Chowk, Mumbai - 400007
3. **THE ASSISTANT MUNICIPAL
COMMISSIONER,**
D Ward, MCGM
Jobanputra Compound Nana Chowk,
Mumbai - 400007
4. **THE EXECUTIVE ENGINEER
(BUILDING PROPOSAL),**
MCGM Building Bhagwan Walmik
Chowk, Vidyalankar Marg, Opp

Hanuman Mandir, Salt Pan Road,
Antop Hill, Mumbai – 400007

5. **THE ASSISTANT ENGINEER
(BUILDING AND FACTORY),**
D Ward, Brihanmumbai Mahanagar
Palika Jobanputra Compound, Nana
Chowk, Mumbai – 400007
6. **DIRSHTI HOSPITALITY
COMPANY PVT. LTD.,**
Having its registered office at Mehta
Mahal Building, 15 Mathew Road,
Opera house, Mumbai – 400004
7. **MEHTA MAHAL COMMERCIAL
CO-OPERATIVE SOCIETY LTD,**
A cooperative Society registered under
the Maharashtra Cooperative Societies
Act, 1960 and Having its registered
address at 15, Mathew Road, Opera
House, Mumbai – 400004

...RESPONDENTS

APPEARANCES

FOR THE PETITIONER	Mr. Chetan Kapadia, Senior Advocate, with Mr. Karl Tamboly, Mr. Hrushi Narvekar, Ms. Aneesa Cheema, Mr. Samit Shukla, Mr. Sidddeclineharth Shah, Saloni Shah, Sayali Diwadkar, i/b. DSK Legal.
FOR RESPONDENT- MCGM	Ms. S. Tondwalkar.
FOR RESPONDENT NO.6	Mr. Manoj Agiwal.
PRESENT IN COURT	Mr. Kunal Khobragade, Sub Engineer (Building Proposal) City.

**CORAM : M.S. Sonak &
Kamal Khata, JJ.**

**RESERVED ON : 20th June 2024
PRONOUNCED ON : 21st June 2024**

JUDGMENT (Per M.S. Sonak, J.):

1. Heard learned counsel for the parties.
2. The Petitioner seeks a Writ of Mandamus directing the Municipal Corporation of Greater Mumbai (“MCGM”) to decide the Petitioner’s regularisation application at Exhibit ‘N’ expeditiously and, in the meantime, to refrain from acting in furtherance of the speaking order dated 09th August 2023 directing the Petitioner to demolish the unauthorised constructions put up by the Petitioner.
3. Mr. Manoj Agiwal, learned counsel for the 6th Respondent, based on whose complaint the MCGM had issued the demolition order, submitted that the Petitioners have suppressed material particulars and, therefore, this Petition should be dismissed without going into the merits or demerits of the matter. He pointed out that the Petitioner has instituted L.C. Suit No.2039 of 2023 before the Civil Court questioning the speaking order dated 09th August 2023. One of the interim reliefs claimed in the suit is a restraint on the MCGM from executing its notice under Section 351 of the Maharashtra Municipal Corporation Act, 1949 (“the MMC Act”) and the impugned speaking order dated 09th August 2023 till the MCGM finally decides the said regularisation application on merits

and expiry of 15 days from the date on which the adverse order is communicated to the Petitioner. Mr. Agiwal submitted that even a Notice of Motion was taken out before the Civil Court, and to date, no such interim relief has been granted by the Civil Court.

4. Mr. Agiwal submitted that the present Petition was filed without disclosing the factum of the institution of this civil suit, pending applications for interim relief, almost similar to the final reliefs now prayed for in this Petition and the fact that no interim relief was granted till date in the said applications/Notice of Motion. Mr. Agiwal submitted that all this amounts to suppression of material particulars, and the extraordinary jurisdiction of this Court must not be exercised favouring such Petitioner.

5. Mr. Chetan Kapadia, learned Senior Advocate for the Petitioner, submitted that the cause of action for instituting the suit was the speaking order dated 09th August 2023, and the cause of action for instituting this Petition was the non-disposal of Petitioner's application for regularisation and insistence upon executing the demolition order. Therefore, he submitted that there was no requirement to make any disclosures with respect to L.C. Suit No.2039 of 2023, and it was not a case of any suppression of material particulars as alleged by learned counsel for the 6th Respondent.

6. Without prejudice, Mr. Kapadia submitted that this Court's order dated 23rd August 2023 in the connected Writ Petition instituted by the 6th Respondent (at Exhibit 'Q' pages 166 to 168) takes cognisance of the fact that the Petitioner has challenged the speaking order by instituting some proceedings. He, therefore,

submits that sufficient disclosures were made, and the objection based on suppression of material particulars ought to be rejected.

7. Mr. Kapadia submitted that the MCGM is duty-bound to consider the Petitioner's application for regularisation and, in the meanwhile, not insist upon executing its demolition order. He submitted that the Petitioner could not have prayed for any direction from the Civil Court for expeditious disposal of the regularisation application. Therefore, this is not a case where the Petitioner is contesting the matter before two different fora with any reasonable cause.

8. Rival contentions now fall for our determination.

9. On a complaint by the 6th Respondent, who claims to be the owner, the MCGM inspected the Petitioner's premises and found that the Petitioner had, prima facie, made some unauthorised constructions therein. Accordingly, a show cause notice was issued to the Petitioner, and since the cause shown was not satisfactory, an order was made for the demolition of unauthorised constructions. The Petitioner filed a civil suit to challenge this show cause notice and demolition order.

10. The Petitioner alleged that the demolition order was unreasoned, and therefore, the matter was once again referred to the MCGM for reconsideration and passing of a speaking order. The MCGM then made the speaking order dated 09th August 2023, furnishing reasons why the cause shown by the Petitioner was not satisfactory and that demolition was required to be ordered.

11. Soon thereafter, the Petitioners filed a second suit, L.C. Suit No.2039 of 2023, before the Civil Court, questioning inter alia this speaking order dated 09 August 2023. Prayer clause (d) in this suit seeks restraint on the execution of the demolition order until the MCGM finally decides the Petitioner's application for regularisation at Exhibit 'N' of this Petition. A Notice of Motion was also taken out, pressing for this relief, and the same is pending consideration.

12. In the present Petition, however, there is no reference to L.C. Suit No.2039 of 2023 or the Notice of Motion taken out therein. The contention that the institution of L.C. Suit No.2039 of 2023 has no nexus with the reliefs sought in this Petition cannot be accepted. The application for interim reliefs in the suit seeks virtually the same prayers as sought in this Writ Petition. The only additional prayer sought in this Writ Petition is to direct the MCGM to decide the regularisation application expeditiously. Therefore, the fact that L.C. Suit No.2039 of 2023 was instituted, and the Petitioner had not obtained any interim relief similar to that prayed for and even obtained in this Petition was an extremely relevant and material fact which the Petitioner was required to disclose to the Court.

13. Such disclosures would have enabled this Court to decide whether, despite the pendency of the suit and the application for interim relief in similar terms filed by the Petitioners therein, any case was made out to entertain the present Petition or exercise discretion and grant interim reliefs. Ultimately, this case is based on the premise that the Petitioner has a right to put up an unauthorised construction and, if discovered, a further unqualified right to regularisation. Upon such a premise, which is prima facie misconceived, the petitioner insists on interim relief without having

disclosed in its petition that similar reliefs are already applied before the Civil Court in the pending suit. The idea was to take chances at both the fora and in the bargain to tire out the 6th Respondent (complainant), which is pursuing its complaint that the Petitioner had carried out unauthorised constructions.

14. Mr. Kapadia's contention was that interim relief was not pressed for before the Civil Court found no support from the record. Mr. Kapadia submitted that the execution of the speaking order dated 09th August 2023 was stayed in the connected Petition instituted by the 6th Respondent. Therefore, he submitted that there was no necessity for the Petitioners to press for similar relief before the Civil Court. However, learned counsel for the 6th Respondent pointed out that not only was the Notice of Motion taken out in the suit seeking similar reliefs, but the same was being pursued on at least four dates.

15. In any event, it is not for the Petitioner to presume that facts relating to the institution of a suit relatable to substantially the same subject matter was not some material particular. The Petitioner was duty-bound to disclose all facts to the Court. Thereafter, it would be at liberty to urge how the pendency of such a suit or the fact that the interim relief similar to that which was being pressed in this Petition was applied for before the Civil Court but not yet granted was not a hurdle to the entertainability or maintainability of the present Writ Petition. Mr. Kapadia's post facto explanations about how the institution of the suit ought not to come in the way of entertaining the present Petition could have perhaps been better appreciated if the Petitioner had disclosed all facts and proceedings in the present Writ Petition.

16. This Court's order dated 23rd August 2023 in the connected Writ Petition (at Exhibit 'Q' pages 166 to 168) records that the speaking order was made on 09th August 2023 and that the Petitioners were contemplating further steps in that regard. This order also records Mr. Tamboly's statement that the speaking order has been challenged in a recent filing instituted on 22nd August 2023. The order also records that Mr. Tamboly, who appeared for the Petitioners, "*does not know, cannot say, or will not say what that proceeding is or where it has been instituted*".

17. The above disclosure in the connected Writ Petition, assuming that the same is some valid disclosure with sufficient particulars in the connected Writ Petition, is certainly not a substitute for suppression of the factum institution of a suit and Notice of Motion seeking substantially similar reliefs from the Civil Court in this petition. The Petitioner was duty bound to disclose all these particulars, and had these particulars been disclosed, we would not have perhaps granted any interim relief given the fact that a similar motion for interim relief was filed and was being pursued before the Civil Court simultaneously.

18. In such matters, the question is not whether the present Writ Petition would be maintainable/entertainable or not after the Petitioner has chosen to institute L.C. Suit No.2039 of 2023 to question the speaking order dated 09th August 2023. The real question is whether the Petitioner was justifiably excused from disclosing the factum institution of such suit along with prayers to restrain the MCGM from enforcing the speaking order until the MCGM disposed of the Petitioner's application for regularisation and for some reasonable period after that.

19. When a petitioner invokes the extraordinary jurisdiction under Article 226 of the Constitution, full and candid disclosures of all material particulars are the very minimum. Most often, such proceedings are decided on pleadings duly supported by affidavits. Even interim reliefs are granted ex parte when a case of urgency is made out. Therefore, the requirement for full and candid disclosures of all relevant and material facts must be insisted upon for the protection of the Court and to enable the Court to exercise its discretion effectively.

20. The record suggests that this Writ Petition was filed, possibly because the Petitioner was not quite confident securing interim relief from the City Civil Court in the Notice of Motion taken out for the very purpose. The record suggests that the Petitioner is pursuing parallel remedies before the Civil Court and this Court by merely tweaking the prayer clause in this Writ Petition. Suppose a party has already availed of the alternate remedy while invoking the jurisdiction under Article 226. In that case, it may not be appropriate to ordinarily entertain the writ petition unless the factum of the resort to such parallel remedies is clearly disclosed and some good explanation is provided. This rule is based on public policy, and the motivating factor is the existence of parallel jurisdiction in another Court, which the petitioner is simultaneously pursuing.

21. The record also suggests the Petitioner had adopted a prima facie contradictory approach. Before the Civil Court, the Petitioner contends that the speaking order declaring the constructions undertaken by them as unauthorised is vulnerable, meaning, thereby, disputing it has put up any unauthorised constructions. On

the other hand, before this Court, the Petitioner sought a writ to direct the MCGM to consider the application for regularisation, which proceeds on the basis that the constructions put up by the Petitioner are indeed unauthorised. Again, the question is not whether the Petitioner is entitled to adopt such prima facie conflicting stances. The very least that is expected of such a Petitioner is that the Writ Court is made aware at the outset of such stances by making full disclosures in the Petition. Only this would enable a Writ Court to exercise its discretionary jurisdiction effectively.

22. In the above circumstances, the Petitioner should have made a clean breast and disclosed the factum of the suit's institution and Notice of Motion seeking virtual identical interim reliefs before the Civil Court and this Court. These were material facts that the Petitioner failed to disclose. Instead, the Petitioner has averred it had no alternate efficacious remedy available to it other than to institute this Petition under Article 226 of the Constitution of India.

23. The jurisdiction of this Court under Article 226 of the Constitution of India is extraordinary, equitable and discretionary. Therefore, it is the duty of the Petitioner to come to the Court with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek appropriate relief. If there is no candid disclosure of relevant and material facts or if the Petitioner obtains ad-interim reliefs without informing the Court that the civil suit is filed in which an application is already taken out for seeking similar reliefs, this Court is not bound to entertain the petition.

24. The Petitioner cannot be allowed to pick and choose the facts but must disclose all the relevant and material facts. After such disclosure, the Petitioner can always explain why, despite such facts, some relief is required to be granted to the Petitioner. In *Satyan vs. Commissioner*¹, the Hon'ble Supreme Court has held that the litigant seeking the prerogative remedy of the writ Court cannot be permitted to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress or not to disclose other facts. That by itself can be a ground to deny the relief to the Petitioner.

25. This is a case where the Petitioner is pursuing two parallel remedies. Assuming that pursuing such parallel remedies simultaneously is permissible, at least the petitioner should have made a free and frank disclosure of all such material facts. Had this Court known that a civil suit and a Notice of Motion seeking substantially similar reliefs was pending, possibly, no ad-interim relief would have been granted.

26. Similarly, on the one hand, the Petitioner questions the speaking order dated 09th August 2023, holding that the construction put up by the Petitioner is unauthorised. On the other hand, the Petitioner applies for regularisation and seeks a mandamus to the MCGM to expeditiously dispose of such application for regularisation. An application for regularisation proceeds on the basis that the constructions put up by the Petitioner are unauthorised. Again, the Petitioner failed to disclose that a suit and a Notice of Motion were pending seeking substantially similar reliefs. This is also not a case where the Petitioner has withdrawn or

¹(2020) 14 SCC 210

offered to withdraw the pending Civil Suit. Therefore, it is clear that the Petitioner wishes to pursue two parallel remedies or substantially similar reliefs. Further, the Petition in this Court was instituted without disclosing the institution and pendency of the civil suit and the Notice of Motion pending therein.

27. Upon cumulative consideration of all the above facts and circumstances, we are not inclined to entertain the present Petition. However, the rejection of this Petition will not come in the Petitioner's way from pursuing the final as well as interim proceedings in L.C. Suit No.2039 of 2023, already instituted by the Petitioner. As noted earlier, the Petitioner, in the Notice of Motion, has precisely sought to restrain the MCGM from enforcing its speaking order dated 09th August 2023 until the Petitioner's application for regularisation is disposed of.

28. Accordingly, the Writ Petition stands dismissed with liberty as aforesaid. There shall be no orders as to costs.

(Kamal Khata, J)

(M. S. Sonak, J)