



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CONTEMPT PETITION NO.291 OF 2024

Yusuf Ali Mohammed Malkani

...*Petitioner*

V/s.

Municipal Corporation of Greater
Mumbai

...*Respondent*

Mr. Shrishail Sakhare *for the Petitioner.*

Mr. Drupad Patil *with Mr. Santosh Mali i/b. Ms. Komal R. Punjabi for the Respondent -MCGM.*

CORAM: SANDEEP V. MARNE, J.

DATED: 9 SEPTEMBER 2025.

P.C.:

1) Contempt Petition alleges breach of the decree dated 25 October 2023 passed by the Small Causes Court in Suit No.2645 of 2017 by which the Respondent No.1-Municipal Corporation of Greater Mumbai (**MCGM**) was restrained from acting on notice issued under Section 354 of the Mumbai Municipal Corporation Act, 1888 (**MMC Act**) till passing of a speaking order and for further period of 7 days thereafter. In respect of another structure, for which Suit No.2646 of 2017 is filed, ad-interim injunction was granted in respect of notice issued by the MCGM under Section 351 of the MMC Act on 29 September 2017, which has been continued from time to time.

2) It is Petitioner's contention that both the structures are demolished by the MCGM on 9 January 2024. It is Petitioner's

contention that no speaking order was passed *qua* the structure in respect of which Suit No.2645 of 2017 was filed and therefore the action of the MCGM amounts to violation of decree passed in Suit No.2645 of 2017. *Qua* other structure it is contented that ad-interim injunction on demolition in pursuance of notice issued under Section 351 of the MMC Act was continued and operational as on 9 January 2024. It is therefore contented that MCGM has acted in breach of orders passed by the City Civil Court.

3) Affidavit-in-reply is filed on behalf of MCGM, in which it is contented in paragraphs 4 to 15 as under:-

4. I say that the land bearing C.T.S. No.9A, 123, 127, 128 are affected by 18.30 m wide DP Road (Datta Mandir Road Junction to Mankani Estate, Malad)

5. I say that the process of removal of structures situated on the said D.P. road was initiated by the Maintenance Department of P- North ward Office. Total 42 structures were situated on the said portion of land.

6. I say that the Policy guidelines laid in the Circular dt.20/03/2017 (Bottle-Neck Policy) were applied for removal of the affected structures. Hereto annexed and marked as **Exhibit-A** is the copy of the Part D.P. showing the said D.P. road. Hereto annexed and marked as **Exhibit B** is the copy of the Demarcation Plan. Hereto annexed and marked as **Exhibit C** is the copy of the Bottle-Neck Policy dated 20/03/2017.

7. I say that on 28/07/2022, the notices to the affected occupiers of the structures were issued calling upon them to submit the documents regarding their eligibility. Hereto annexed and marked as **Exhibit D** is the copy of Notice dated 28/07/2022.

8. I say that similar notice was issued to the Petitioner on 19/09/2022. Hereto annexed and marked as **Exhibit E** is the copy of Notice issued to the Petitioner.

9. I say that Petitioner did not supply any documents. I say that as per Bottle-Neck Policy, the draft Annexure-II was prepared and published. Name of the Petitioner is a serial no.27 for the structure no.37. Since he had not submitted any documents, he was declared as “Not Eligible”. Hereto annexed and marked as **Exhibit F** is the copy of the Annexure-II. The Public Notice inviting objections on the said draft Annexure-II was published on 03/02/2023 and 04/08/2023. Hereto annexed and marked as **Exhibit G** is the copy of the Public Notice dated 03/02/2023. Hereto annexed and marked as **Exhibit H** is the copy of the Public Notice dated 04/08/2023.

10. Thereafter, again Petitioner was called upon to supply documents vide Notice dated 11/10/2023. Hereto annexed and marked as **Exhibit I** is the copy of Notice Dated 11/10/2023.

11. Thereafter, Petitioner supplied the documents on 23/10/2023. Hereto annexed and marked as **Exhibit J (Colly)** is the copy of the letter submitted by the Petitioner along with annexures. Neither in the letter nor in the documents, the Petitioner relied upon the orders passed by the City Civil Court.

12. I say that thereafter, the documents submitted by the Petitioner were considered. None of the documents were pertaining to the period prior to 01/01/2000. Hence, the Petitioner was declared as “Not-eligible” in final Annexure-II dated 15/12/2023. Hereto annexed and marked as **Exhibit K** is the copy of the final Annexure-II dated 15/12/2023.

13. I say that the Petitioner is well aware about the rejection of his claim. He has already filed an Appeal dated 16/01/2024 against Annexure-II. Hereto annexed and marked as **Exhibit L** is the copy of the Appeal dated 16/01/2024.

14. I say that subject-matter of the Civil Suits filed by the Petitioner were notices issued under Section 351 and 354, regarding the authenticity of the structures occupied by the Petitioner. No doubt interim relief needs to mean that the Corporation was restrained from taking any further steps on the basis of the said Notices under Section 351 and 354.

15. I say that the Corporation has not at all acted upon said notices. The demolition process was completed under the Bottle-Neck Policy to complete the construction of the D.P. road. The above referred notices were not at all related to the construction of the D.P. road.

4) It thus appears that action for demolition of the two structures has been taken independent of the notices earlier issued under Sections 351 and 354A of the MMC Act. Demolition dated 9 January 2024 was effected on account of Bottleneck Policy declared vide Circular dated 20 March 2017. It appears that structures are affected by 18.30 meters wide DP road. Under the Bottleneck Policy, the affected structures are entitled to rehabilitation subject to declaration of eligibility. Accordingly, Notice dated 28 July 2022 and reminder dated 19 September 2022 were issued to the Petitioner. After preparation of Draft Annexure - II including name of Petitioner at Serial No.27, he was granted an opportunity to submit documents for declaration of eligibility. Petitioner participated in the said proceedings and submitted documents. However, after perusal of Petitioner's documents, he is declared ineligible on account of inability to prove existence of structure prior to 1 January 2000. Petitioner challenged rejection of his eligibility by filing appeal on 16 January 2024. Petitioner thus has appropriate remedy in respect of orders passed declaring him ineligible. In the event Petitioner's eligibility is proved, he would be entitled to Permanent Alternate Accommodation from the MCGM. It is thus apparent that demolition of the structure is effected by virtue of implementation of Bottleneck Policy vide Circular dated 20 March 2017. Demolition action has nothing to do with the notices earlier issued under Sections 351 or 354A of the MMC Act. There is thus no deliberate or intentional violation on the part of the MCGM.

5) Contempt Petition is accordingly closed and **disposed of**.

[SANDEEP V. MARNE, J.]