

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 226 OF 2025

Ganpat Shankar Chougule	Appellant .. (Orig. Plaintiff)
Versus	
The Municipal Corporation of Greater Mumbai	Respondent .. (Orig. Defendant)

WITH
INTERIM APPLICATION (ST) NO. 14151 OF 2025
IN
APPEAL FROM ORDER NO. 226 OF 2025

Nemi Krishna Cooperative Housing Society	Applicant / .. Intervenor
<u>IN THE MATTER BETWEEN</u>	
Ganpat Shankar Chougule	Appellant .. (Orig. Plaintiff)
Versus	
The Municipal Corporation of Greater Mumbai	Respondent .. (Orig. Defendant)

WITH
INTERIM APPLICATION NO. 7163 OF 2025
IN
APPEAL FROM ORDER NO. 226 OF 2025

Ganpat Shankar Chougule	Applicant / .. Orig. Plaintiff
Versus	
The Municipal Corporation of Greater Mumbai	Respondent .. (Orig. Defendant)

WITH
APPEAL FROM ORDER NO. 227 OF 2025

Shabbiruddin Badruddin Ansari	Appellant .. (Orig. Plaintiff)
Versus	
The Municipal Corporation of Greater Mumbai	Respondent .. (Orig. Defendant)

WITH
INTERIM APPLICATION (ST) NO. 14156 OF 2025
IN
APPEAL FROM ORDER NO. 227 OF 2025

Nemi Krishna Cooperative Housing Society	Applicant / .. Intervenor
 <u>IN THE MATTER BETWEEN</u>	
Shabbiruddin Badruddin Ansari	Appellant / .. Orig. Plaintiff
 Versus	
The Municipal Corporation of Greater Mumbai	Respondent .. (Orig. Defendant)

WITH
INTERIM APPLICATION NO. 7164 OF 2025
IN
APPEAL FROM ORDER NO. 227 OF 2025

Shabbiruddin Badruddin Ansari	Applicant .. (Orig. Plaintiff)
 Versus	
The Municipal Corporation of Greater Mumbai	Respondent .. (Orig. Defendant)

WITH
APPEAL FROM ORDER NO. 247 OF 2025

Milan Ashok Kasavkar	.. Appellant
 Versus	
The Municipal Corporation of Greater Mumbai	.. Respondent

WITH
INTERIM APPLICATION (ST) NO. 14366 OF 2025
IN
APPEAL FROM ORDER NO. 247 OF 2025

Nemi Krishna Cooperative Housing Society	Applicant / .. Intervenor
 <u>IN THE MATTER BETWEEN</u>	
Milan Ashok Kasavkar	Appellant / .. Orig. Plaintiff
 Versus	
The Municipal Corporation of Greater Mumbai	.. Respondent

(Orig. Defendant)

WITH
INTERIM APPLICATION NO. 7481 OF 2025
IN
APPEAL FROM ORDER NO. 247 OF 2025

Milan Ashok Kasavkar	.. Applicant
Versus	
The Municipal Corporation of Greater Mumbai	.. Respondent

WITH
APPEAL FROM ORDER NO. 248 OF 2025

Ashok Sambhaji Kasavkar	.. Appellant
Versus	
The Municipal Corporation of Greater Mumbai	.. Respondent

WITH
INTERIM APPLICATION (ST) NO. 7484 OF 2025
IN
APPEAL FROM ORDER NO. 248 OF 2025

Ashok Sambhaji Kasavkar	Applicant /
	.. Intervenor
<u>IN THE MATTER BETWEEN</u>	
Ashok Sambhaji Kasavkar	Appellant /
	.. Orig. Plaintiff
Versus	
The Municipal Corporation of Greater Mumbai	Respondent
	.. (Orig. Defendant)

WITH
INTERIM APPLICATION (ST) NO.14368 OF 2025
IN
APPEAL FROM ORDER NO. 248 OF 2025

Nemi Krishna Cooperative Housing Society	Applicant /
	.. Intervenor
<u>IN THE MATTER BETWEEN</u>	
Ashok Sambhaji Kasavkar	Appellant /
	.. Orig. Plaintiff
Versus	
The Municipal Corporation of Greater Mumbai	Respondent
	.. Orig. Defendant

WITH
APPEAL FROM ORDER (ST) NO. 12987 OF 2025

Tapindra Bansbahadur Singh	Appellant .. (Orig. Plaintiff)
Versus	
The Municipal Corporation of Greater Mumbai	Respondent .. (Orig. Defendant)

WITH
INTERIM APPLICATION (ST) NO. 14154 OF 2025
IN
APPEAL FROM ORDER (ST) NO. 12987 OF 2025

Nemi Krishna Cooperative Housing Society	Applicant / .. Intervenor
<u>IN THE MATTER BETWEEN</u>	
Tapindra Bansbahdur Singh	Appellant .. (Orig. Plaintiff)
Versus	
The Municipal Corporation of Greater Mumbai	Respondent .. (Orig. Defendant)

WITH
INTERIM APPLICATION (ST) NO. 12988 OF 2025
IN
APPEAL FROM ORDER (ST) NO. 12987 OF 2025

Tapindra Bansbahadur Singh	Applicant / .. Orig. Plaintiff
Versus	
The Municipal Corporation of Greater Mumbai	Respondent .. (Orig. Defendant)

WITH
APPEAL FROM ORDER (ST) NO. 12989 OF 2025

Laxmi Laxman Bhagne	Appellant .. (Orig. Plaintiff)
Versus	
The Municipal Corporation of Greater Mumbai	Respondent .. (Orig. Defendant)

WITH

INTERIM APPLICATION (ST) NO. 12990 OF 2025
IN
APPEAL FROM ORDER (ST) NO. 12989 OF 2025

Laxmi Laxman Bhagne	Applicant .. (Orig. Plaintiff)
Versus	
The Municipal Corporation of Greater Mumbai	Respondent .. (Orig. Defendant)

WITH
INTERIM APPLICATION (ST) NO. 14160 OF 2025
IN
APPEAL FROM ORDER (ST) NO. 12989 OF 2025

Nemi Krishna Cooperative Housing Society	Applicant / .. Intervenor
IN THE MATTER BETWEEN	
Laxmi Laxman Bhagne	Appellant / .. Orig. Plaintiff
Versus	
The Municipal Corporation of Greater Mumbai	Respondent .. (Orig. Defendant)

WITH
APPEAL FROM ORDER (ST) NO. 12992 OF 2025

Sunita Ganpat Chougule	Appellant .. (Orig. Plaintiff)
Versus	
The Municipal Corporation of Greater Mumbai	Respondent .. (Orig. Defendant)

WITH
INTERIM APPLICATION (ST) NO. 12993 OF 2025
IN
APPEAL FROM ORDER (ST) NO. 12992 OF 2025

Sunita Ganpat Chougule	Applicant .. (Orig. Plaintiff)
Versus	
The Municipal Corporation of Greater Mumbai	Respondent .. (Orig. Defendant)

WITH

INTERIM APPLICATION (ST) NO. 14155 OF 2025
IN
APPEAL FROM ORDER (ST) NO. 12992 OF 2025

Nemi Krishna Cooperative Housing Society	Applicant / .. Intervenor
<u>IN THE MATTER BETWEEN</u> Sunita Ganpat Chougule	Appellant / .. Orig. Plaintiff
Versus The Municipal Corporation of Greater Mumbai	Respondent .. (Orig. Defendant)

WITH
APPEAL FROM ORDER (ST) NO. 12996 OF 2025

Vasant Dhakatu Gopal	Appellant .. (Orig. Plaintiff)
Versus The Municipal Corporation of Greater Mumbai	Respondent .. (Orig. Defendant)

WITH
INTERIM APPLICATION (ST) NO. 12997 OF 2025
IN
APPEAL FROM ORDER (ST) NO. 12996 OF 2025

Vasant Dhakatu Gopal	Applicant .. (Orig. Plaintiff)
Versus The Municipal Corporation of Greater Mumbai	Respondent .. (Orig. Defendant)

WITH
INTERIM APPLICATION (ST) NO. 14158 OF 2025
IN
APPEAL FROM ORDER (ST) NO. 12996 OF 2025

Nemi Krishna Cooperative Housing Society	Applicant / .. Intervenor
<u>IN THE MATTER BETWEEN</u> Vasant Dhakatu Gopal	Appellant / .. Orig. Plaintiff
Versus The Municipal Corporation of Greater Mumbai	Respondent .. (Orig. Defendant)

-
- Mr. Aseem Naphade a/w. Mr. Malhar Bageshwar, Advocates i/by Mr. Samir M. Suryawanshi for Appellants in Appeal From Order No.247 of 2025 and Appeal From Order No.248 of 2025.
 - Mr. P.J. Thorat a/w. J.S. Yadav, Advocates i/by Bholaprasad S. Shukla for Appellants in Appeal From Order Nos.226 of 2025 and 227 of 2025; Appeal From Order (St.) Nos.12987 of 2025; 12989 of 2025; 12992 of 2025 and 12996 of 2025.
 - Mr. Karl Tamboly a/w. Mr. Aadil Parsurampur, Mr. Mehul Rathod, Dhanashree Pawaskar and Ms. Darshana Vora, Advocates i/by Mr. Mehul Rathod for Applicants / Intervenors in Interim Application (St.) Nos.14151 of 2025; 14154 of 2025; 14155 of 2025; 14156 of 2025; 14158 of 2025; 14160 of 2025, 14366 of 2025 and 14368 of 2025.
 - Ms. Pooja Khandeparkar a/w. Ms. Neeta Jadhav, Advocates i/by Mr. Komal Punjabi for Respondent – MCGM.
-

CORAM : MILIND N. JADHAV, J.

DATE : NOVEMBER 26, 2025.

JUDGMENT:

1. Heard Mr. Naphade, learned Advocate for Appellants in Appeal From Order No.247 of 2025 and Appeal From Order No.248 of 2025; Mr. Thorat, learned Advocate for Appellants in Appeal From Order Nos.226 of 2025 and 227 of 2025; Appeal From Order (St.) Nos.12987 of 2025; 12989 of 2025; 12992 of 2025 and 12996 of 2025; Mr. Tamboly, learned Advocate for Applicants / Intervenors in Interim Application (St.) Nos.14151 of 2025; 14154 of 2025; 14155 of 2025; 14156 of 2025; 14158 of 2025; 14160 of 2025, 14366 of 2025 and 14368 of 2025 and Ms. Pooja Khandeparkar, learned Advocate for Respondent – MCGM.

2. By consent of the parties, present group of Appeal From Orders alongwith Interim Applications are heard finally and decided by this common judgment. Facts are identical and whenever there is a variation, it is accordingly noted by the Court. This is a group of 8 Appeal From Orders filed by 8 individuals / Appellants. They are broadly divided into two groups. Appeal From Order Nos.247 of 2025 and 248 of 2025 are filed by one group whereas Appeal From Order Nos.226 of 2025 and 227 of 2025 and (St.) Nos.12987 of 2025; 12989 of 2025; 12992 of 2025 and 12996 of 2025 are filed by another group. In the first group, Mr. Naphade appears for 2 Appellants whereas in the second group Mr. Thorat appears for 6 Appellants.

3. There are 8 Intervention Applications filed by one Nemi Krishna Cooperative Housing Society and 8 Injunction Applications filed by their respective Appellants in their respective Appeal From Orders. Mr. Tamboly, learned Advocate appears for Nemi Krishna Cooperative Housing Society in all the matters. The principal contesting Respondent is the Municipal Corporation of Greater Bombay, R/South Ward Office. Ms. Khandeparkar, learned Advocate appears on behalf of the Municipal Corporation of Greater Mumbai (for short '**Corporation**') in all 8 matters whereas all learned Advocates on behalf of respective parties have addressed the Court at length and made their submissions.

4. Briefly stated challenge in all Appeal From Orders is with respect to dismissal of their individual / respective Notice of Motion filed by them seeking interim relief in the substantive Suits before the Trial Court.

5. In the first group of 2 matters, one Mr. Ashok Sambhaji Kasavkar has filed LC Suit No.2312 of 2024 alongwith Notice of Motion No.3671 of 2024 in the Trial Court seeking injunction. His wife Ms. Milan Ashok Kasavkar is the other Appellant.

6. There is a history to the case of all these 8 Appellants their structures before me dating back to as far back as 1998. One thing that is admitted by the parties is that the land on which the 8 structures of Appellants before me are situated / constructed belong to Nemi Krishna Co-operative Housing Society (for short '**the Society**') who is Intervenor in the present proceedings. This Society is in the immediate vicinity of Kandivali Railway Station infact land / boundary of Society abuts Kandivali Railway Station. Once again all parties are *ad idem* on the fact that the southern portion of the Society land admeasuring 107 square meters is situated within close proximity of 150 meters from Platform No.1 of Kandivali Railway Station which is the land where the offending structures are standing / situated. Broadly when the matters are argued Mr. Naphade appearing for the first group of 2 Appellants fairly admits that their structures are the same structures covered in

the previous round of litigation pertaining to 27 illegal and unauthorised structures the details of which are set out hereunder.

7. However without adhering to the issue of legality of structures, Mr. Naphade chose to address Court on veracity and validity of notice the under Section 349 of the Mumbai Municipal Corporation Act, 1888 (for short '**MMC Act**') received by his clients. Mr. Thorat has also taken the same route and defense but in addition thereto with respect to his 6 Appellants, he has made a far reaching submission that their structures are situated in a different place and not at the same place where the previous 27 illegal and unauthorised structures, which were the subject matter of the previous round of litigation, are / were situated. I shall deal with this submission in detail after I narrate the background of the previous litigation which in my opinion *prima facie* and without any doubt whatsoever covers the structures of all the 8 Appellants before me.

8. Both the learned Advocates namely Mr. Naphade and Mr. Thorat have laid stress on seeking to follow the due process of law, if their clients are to be dispossessed by the MCGM from their structures. Both have relied upon the concept of long standing possession of their structures and have referred to identical 5 documents as evidence in support of each of their respective cases. They have both taken me through the 5 documents which are which are viz; Census Certificate

issued in the year 1980, Census Receipt issued in the year 2000, Repair Permission granted by the Municipal Corporation in the year 1982, Electricity Bill and photograph of structures. The Suit that is filed in the year 2024 by these 8 Appellants / Plaintiffs seek injunction against the Corporation from demolition / removal / pulling down of their structures. Cause of action pleaded in all 8 Suit complaints is the threat administered by Corporation's officer on 17.10.2024 to demolish their structures. Hence 8 separate Suits are filed by the Appellants seeking injunction.

9. At the outset, it is seen that premise of the LC Suits filed by 8 Appellants is on the basis that they are the owners of the land and structure since the relief prayed for by Plaintiffs is for permanent order of injunction and no other relief. Pure relief of injunction can only be sought by an owner of the property. The averments made in all the Suit complaints are identical and are on the basis that the suit structure is duly Censused in 1976 and 2000 and in 1982 the Corporation issued repair permission permitting the Plaintiffs to repair the suit structures. For the sake of reference and convenience, it is necessary to give the dimensions of the structures belonging to these 8 Appellants / Plaintiffs before me. They are as under:-

Sr. No.	Name	Area
1	Ganpat Shankar Chougule	12 ft. x 7 ft.
2	Shabbiruddin Badruddin Ansari	8 ft. x 10 ft.

3	Milan Ashok Kasavkar	8 ft. x 8 ft.
4	Ashok Sambhaji Kasavkar	35 ft x 18 ft.
5	Tapindra Bansbahadur Singh	5 ft x 10 ft.
6	Laxmi Laxman Bhagne	5 ft. x 10 ft.
7	Sunita Ganpat Chougule	5 ft. x 5 ft.
8	Vasant Dhakatu Gopal	14 ft. x 8 ft.

10. On the basis of the averments only, the Suit proceeding is filed. Hence at the outset it is seen that Appellants / Plaintiffs have suppressed the entire proceedings filed previously against the same structures and are therefore clearly guilty of *suppressio veri and suggestio falsi* on the face of record. When parties approach the Court with such unclean hands and clear suppression of facts on the face of record, the consequences follow. Here is the case of Appellants / Plaintiffs before me who have knowingly suppressed the previous proceedings from the Court. Though Mr. Thorat has adopted a different line of argument arguing that his 6 Appellants / Plaintiffs whom he represents were not part of the previous proceedings, he is completely wrong in making that submission. I shall deal with it adequately herein under.

11. Further when a Suit for injunction is filed, it is trite position in law that Plaintiff who approaches the Court for injunction does so on the basis of his entitlement i.e. right, title and interest in the suit premises. It is only then a Suit for injunction is maintainable. Here is the case of these 8 Appellants before me who admittedly do not have

any right, title and interest whatsoever in the land on which their structures are erected. Both the learned Advocates for Appellants have in their usual fairness conceded the fact that none of the Appellants / Plaintiffs are in a position to show any sanctioned plan whatsoever with respect to the origin of their respective shop premises on the land belonging to the Society and all that they have argued is on the basis of their long standing possession on the basis of the 3 documents alluded to herein above supported by electricity bill and photo graphs which are very strongly refuted by the Corporation. Rather the Corporation has argued and questioned the veracity of the first 3 documents as highly questionable. Be that as it may, those 3 documents namely Census Certificate issued of the year 1980, Census Receipt issued in the year 2000 and Repair Permission granted by Municipal Corporation in the year 1982 do not prove that the Appellants / Plaintiffs are the owners of the suit premises. Hence on this count, Appellants' / Plaintiffs' case cannot be countenanced at all.

12. Thirdly and most importantly is the fact that all 8 suit premises before me were duly granted substantive opportunity to prove their case previously in the previous round of litigation which lasted from 1999 to 2024 until it was determined by the Supreme Court against 2 Appellants represented by Mr. Naphade and the previous occupants of the structures standing on the same place where the present 8 structures are standing. The said 8 structures enjoyed the

hospitality of interim injunction and order for years and that merely does not entitle them to now make a submission of long standing possession in their favour. Occupants of the previous structures namely 27 structures situated outside Platform No.1 on the very same property of the Society came together and formed a Society called Saibaba Mitra Mandal. They filed LC Suit No.5752 of 1998 against the Corporation seeking a direction to the Corporation to follow the due process of law if their structures were to be removed / demolished. This Suit filed in the year 1998 was dismissed for want of prosecution. The said Saibaba Mitra Mandal thereafter in a representative capacity on behalf of all 27 members / structures filed a second Suit No.1308 of 1999 challenging the notices issued by the Corporation dated 06.01.1999 under Section 349 of the MMC Act. They sought direction to the Corporation to follow the due process of law before any coercive action could be taken for demolishing their structures. This saga began in the year 1999 and went on all along until the year 2024. The occupants / structures enjoyed the interim order preventing demolition for all these years. After the said Saibaba Mitra Mandal lost in the Supreme Court, the Corporation then issued notices under Section 349 of the MMC Act for taking action but once again a new set of 6 structure owners which had changed hands in the meanwhile now represented by Mr. Thorat have taken up the plea that they were not part of the previous round of litigation and therefore the previous

order cannot apply to them / their structure and now in their case once again due process of law needs to be followed. This is an ingenious argument made by the 6 Appellants / Plaintiffs represented by Thorat before me. By such an argument they have virtually decimated the concept of due process of law by making such a submission. These are structures rather unauthorized and illegal structures forcibly put up outside the Railway Station on the property of the Cooperative Housing Society without any due authority of law whatsoever having no walls but A.C. sheets as walls but no roof but tarpaulin sheet cover over the said A.C. sheet. Football and business of any nature is very high. The 6 Appellants / Plaintiffs represented by Mr. Thorat have the audacity to submit that since they were not part of the previous 27 members of Saibaba Mitra Mandal to whom the previous order would apply and fresh due process of law should be invoked qua them. When admittedly the fact is that their very structures were part of the previous 27 structures duly represented by Saibaba Mitra Mandal for over a period of 25 years between 1999 and 2024 merely because of change of hands, such argument is not available to them. It is a patently absurd argument deserving dismissal *in limine*. Hence this submission is not open to them that in their case due process of law needs to be followed once again qua the unauthorized and illegal structure rather the said unauthorized structure which they have purchased from their predecessor which is *prima facie* illegal on the

face of record.

13. In so far as Mr. Ashok Sambhaji Kasavkar represented by Mr. Naphade is concerned, he was the President of the said Saibaba Mitra Mandal and had prosecuted the entire proceedings from the year 1999 to 2024. This is the admitted position.

14. In the year 1999 after notices were issued under Section 349 of the MMC Act, all structures were demolished by following the due process of law on the very land of the Society, but the occupants thereof constructed temporary walls using inflammable material like bamboo framework with plastic and tarpaulin sheet and converted the tarpaulin in A.C. sheet roof. These structures were specifically demolished on 25.02.1999 by the Corporation by following the due process of law. They were put up again and hence Court Commissioner was appointed to verify these structures. The inspection by the Court Commissioner was conducted on 27.02.2001. He filed a report stating that out of the original 27 stalls, 12 stalls were constructed once again with plywood and wooden plank, two other structures had partial walls of teen sheets and rest of the structures were erected with bamboo sticks and wooden polls.

15. The second Suit No.1308 of 1999 filed by Saibaba Mitra Mandal to protect these 27 structures was thereafter dismissed on 20.03.2001 returning a finding that the 27 suit structures were erected

without permission or were unauthorized. What follows thereafter is crucial. While dismissing the Suit, Plaintiff was given liberty to file Regularization Application and accordingly Regularization Application dated 02.04.2001 was filed by Plaintiffs therein seeking regularization of all the notice structures. The said Regularization Application was dismissed by the Corporation in respect of all 27 structures on 17.04.2001 on the basis of the documents produced by them in support of regularization clearly returning a finding that the structures were un-authorized. On rejection of the Regularization Application, Corporation once again issued notice dated 27.04.2001 for demolition of the offending structures.

16. In order to circumvent the said notice, the said Saibaba Mitra Mandal once again filed a third Suit namely LC Suit No.2232 of 2001 for setting aside the 349 notice of the MMC Act dated 06.01.1999 and order dated 17.04.2001 rejecting regularization and the fresh notice dated 27.04.2001 of demolition. Thereafter from the year 2001 to 2012, the notice structures namely 27 members of Saibaba Mitra Mandal enjoyed the interim relief but after a full-fledged trial, the third LC Suit No.2232 of 2001 was also finally dismissed on merits by judgment and decree dated 18.10.2012. Plaintiff - Saibaba Mitra Mandal thereafter filed First Appeal No.1584 of 2012 in this Court wherein by order dated 06.06.2017 the Suit was remanded back to the Trial Court by framing additional issues as to whether the Plaintiffs

prove that they were entitled to erect, locate and to situate their 27 stalls / structures on the land belonging to the Society and whether the location of the Plaintiffs' stalls was ever authorized by the Corporation Authorities. With this remand order, this Court directed the Trial Court to decide the Suit in a time bound manner. Once again both the parties were heard on the additional issues framed by this Court and once again on merits the Suit was dismissed by judgment dated 05.12.2017. It is seen that said Saibaba Mitra Mandal thereafter filed a fresh First Appeal No.553 of 2018 and obtained interim protection which was extended from time to time thereafter. This Court in First Appeal by judgment dated 05.08.2024 upheld and confirmed the judgment and decree of the Trial Court passed in LC Suit No.2232 of 2001 returning a finding that the Trial Court had rightly dismissed the Suit. Said Saibaba Mitra Mandal thereafter challenged the judgment dated 05.08.2024 before the Supreme Court in Special Leave to Appeal SLP (c) No.22201 of 2024 which was dismissed by order dated 30.09.2024.

17. After the aforesaid dismissal by the Supreme Court apprehending that their structures will be demolished, 8 out of the 27 members of Saibaba Mitra Mandal who still have their structures / stalls filed 8 separate Suits in the City Civil Court in October 2024. What is shocking the conscience of this Court is the fact that is none of the said 8 Suits disclosed the aforesaid previous proceedings and clearly suppressed all such facts and took advantage of the due process

of law.

18. The argument of Mr. Thorat is that the 6 Appellants / Plaintiffs whom he represents were never part of the previous round of litigation cannot be countenanced either. He would vehemently argue that the address shown with respect to the previous 27 structures of the members of Saibaba Mitra Mandal and the address of the Plaintiffs in the present Suit proceedings is different. He would submit that in the previous round of litigation the structures of Saibaba Mitra Mandal were shown to be abutting on Vasant Lalji Road, Kandivali (west) whereas the present structures of the six Appellants/ Plaintiffs whom he represents are on Bajaj Road, Kandivali (west) and both are at different locations. On this count also the learned Advocate is clearly wrong. Vasant Lalji Road is the road which leads from Kandivali Station on which the property of the Society is existing. In so far as Bajaj Road is concerned, there is a Bajaj BMC School across the road and the said Bajaj cross road is perpendicular to Vasant Lalji Road as can be seen from the location plan before me. Both roads are one and the same, rather the road is known by two names as per the addresses on the documents of the Appellants. That apart, the exact location of the structure of the 6 Plaintiffs represented by Mr. Thorat is absolutely identical to the structures which were depicted on the Court Commissioner's Report appended to the proceedings which are also placed on record.

19. With the able assistance of the learned Advocate for the Corporation and the Society, I have also perused not only the location map of the structures, but also compared the addresses on the Electricity Bill and the alleged Census receipt relied upon by the Appellants / Plaintiffs. It is seen that Bajaj Cross Road / Bajaj Road and Vasant Lalji (VL) Road is used in the alternate while describing the addresses and therefore this argument of Mr. Thorat that the 6 Plaintiffs before me were not part of the previous proceedings and their structures are located on a completely different road stands defeated on the face of record. It cannot be accepted by the Court at all even on *prima facie* consideration.

20. Mr. Thorat's has referred to and relied upon the decision of the Supreme Court in the case of ***Krishna Ram Mahale (Dead) by LRs. Vs. Shobha Venkat Rao***¹ and the decision of this Court in the case of ***Abdul Hasan Shaikh Mansuri Vs. Municipal Corporation of Mumbai and Ors.***² but those decisions cannot apply in the facts of the present case which are so glaring and malafide as pleaded by his clients.

21. I have perused the Affidavit – in – Reply filed by Mr. Abhay Dinkar Jagtap, Designated Officer / Executive Engineer with the able assistance of Ms. Khandeparkar, learned Advocate for MCGM. In the present case, it is *prima facie* seen that the 8 Appellants / Plaintiffs

¹ (1989) 4 SCC 131

² 2006 SCC OnLine Bom 234

before me are already taking rather taken undue advantage of the due process of law though it is argued by 6 out of 8 Appellants / Plaintiffs that they were not part of the previous round of proceedings. Such submission stands to be rejected outrightly. It is *prima facie* proven and evident from the material on record relied upon by Appellants themselves that structures of the 6 Appellants were clearly and undoubtedly part of the earlier round of litigation. Secondly, the Appellants before me have clearly suppressed the earlier litigation without disclosure of any fact or order of Court therein and such conduct deserves to be deprecated by the Court. Land on which these structures are standing belong to the intervenor Society, the Appellants / Plaintiffs have no right whatsoever either in the land or to sustain their structures put up by them on the said land which are illegal and unauthorised. Thirdly these structures of Appellants / Plaintiffs before me enjoyed the benefit of injunction from 1999 to 2024. Fourthly, one of the Appellant Vasant Dhakatu Gopal represented by Mr. Thorat relies upon the Udyam Registration Certificate dated 24.02.2023 which itself mentions the name of Shree Sai Baba Mitra Mandal as the name of the building premises at page No. 81 of his Appeal from Order whereas his Shop and Establishment Premises Certificate as well as the Electricity Bill is in the name of Sunita Sangeeta Chowgule which clearly highlights his dishonest conduct. Therefore submission of Mr. Thorat that his clients had no nexus with the structures in the previous

round of litigation deserves to be dismissed with appropriate strictures and exemplary costs. Such an argument is not open to these 6 Appellants before me at all by merely relying on the Census Certificate and Census Receipt which is not good enough to establish their title. These appellants before me are nothing but illegal hawkers and land grabbers which grab any vacant spaces outside Railway Stations which are high density footfall areas for hawking their business. This menace has spread across Mumbai city outside all Suburban Railway Stations like a disease. In this case Appellants have no legal right to occupy the land of the Society which they did for 26 long years from 1999 to 2025 and all this while due process of law as followed by the Courts in regard to their structures right upto the Supreme Court. Time has come to send a strong message to such illegal hawkers and land grabbers that rule of law prevails in this country. These hawkers /Appellants never pay taxes, they inconvenience the general public at large, litter public areas, they occupy land belonging to others forcibly and then approach Courts to seek due process of law to be followed before evicting them. All above attributes are exercised by the 8 Appellants herein in the present case. Common people whose land is grabbed by such persons cannot withstand them due to political patronage and other obvious reasons which are not hidden. But when facts are glaring and unambiguous like in the present case, this Court cannot be a silent spectator.

22. Admittedly the land belongs to the Society and the Appellants / Plaintiffs cannot set up rival entitlement on the basis of the above evidence which has been rejected by the Court rather all Courts in proceedings right up to the Supreme Court. Today before me, both learned Advocates Mr. Naphade and Mr. Thorat have addressed on the cause of action being notice under Section 349 of Mumbai Municipal Corporation, 1888 and argued that it merely pertains to certain derelictions by them which they are ready to correct. Both the learned Advocates have addressed and argued that some of the structures are made of brick masonry walls and therefore the notices deserve to be contested. It needs to be reiterated that the status of the very structures has been taken cognizance of as far back as in the year 2001 in Order dated 20.03.2001 passed in L.C. Suit No.1308 of 1999. Civil Court has taken cognizance of the Commissioner's Report which stated that rest of the stalls were having no walls and wherever walls were found, it was made with plywood or tin sheets. In the present case itself, Secretary of Shree Sai Baba Mitra Mandal, Mr. Ashok Kasavkar who was admittedly part of the earlier round of proceedings claims to own area admeasuring 630 square feet (35' X 18'). Admittedly, Mr. Kasavkar has attempted to hoodwink this Court by filing fresh plea so as to protect the illegality which was decided by clear suppression which cannot be allowed by this Court once noticed. Next, it is also seen that the Hon'ble City Civil Court in the previous

round of litigation in its order has clearly held that occupants of these structures have not proved that the structures are authorized or tolerated by any policy and that was as far back as in 2001 pursuant to which the all occupants of the structures applied for regularization to the Corporation and their regularization applications were comprehensively dismissed.

23. These Appellants before me, were given a reprieve by this Court in the First Appeal proceedings by Order dated 06.06.2017 by framing two additional issues as to whether they proved that they were entitled to erect, locate and situate the 27 stalls / structures at the subject land and whether the location of the said stalls was authorised or permitted by the Corporation. Upon remand to the City Civil Court, both the aforesaid additional issues were tried, evidence was led and they were decided against Appellants. In further First Appeal thereafter the findings were reaffirmed by this Court by Order dated 05.08.2024 and by the Supreme Court by Order dated 30.09.2024.

24. In the above background, the same issue is sought to be now re-agitated by some of the stall owners individually. The Appellant / Plaintiffs before me have no semblance of any right or legality to occupy the structures as they are blatantly illegal and unauthorised. The existence of these structures is nothing but a sheer abuse of the due process of law. Appellants are not entitled to any relief

whatsoever. The order passed by the City Civil Court in the 8 Suit proceedings have been correctly passed and in the above background and no infirmity whatsoever can be found in the passing of the impugned orders. All orders impugned in the 8 Appeal From Orders are confirmed and upheld. Resultantly all Appeal from Orders fail. In the facts and circumstances of the present case alluded to hereinabove considering the conduct of the Appellants before me of clear suppression and non- disclosure of previous proceedings in the suit plaint, taking a false plea that they were not part of the previous proceedings by 6 out of the 8 Appellants before me, invoking jurisdiction of this Court on a false plea for following the due process of law despite enjoying interim protection from 1999 to 2024 for the same cause of action and contemplating following due process of law once again, I am inclined to levy exemplary costs on the Appellants.

25. For such above conduct of the Appellants / Plaintiffs before me, I am inclined to levy exemplary costs Appellants / Plaintiffs in the 8 Appeal from Orders. Two Appellants represented by Mr. Naphade in Appeal From Order Nos.247 of 2025 and 248 of 2025 are directed to pay costs of Rs.25,000/- each to the Kirtikar Law Library, High Court, Mumbai since they have admitted the fact that they were part of the previous suit proceedings. Six Appellants represented by Mr. Thorat in Appeal From Order Nos.226 of 2025 and 227 of 2025; Appeal From Order (St.) Nos.12987 of 2025; 12989 of 2025; 12992 of 2025 and

12996 of 2025 are directed to pay costs of Rs.50,000/- each to the Kirtikar Law Library, High Court, Mumbai for the reasons stated in this order since they have argued that they were never part of the previous proceedings. All 8 Appellants are directed to deposit the aforementioned costs / amounts as directed within a period of two weeks from today failing which the same shall be recovered by the Collector Mumbai Suburban District from the Appellants / Plaintiffs as arrears of land revenue and deposited with the Kirtikar Law Library, High Court, Mumbai.

26. In view of the above observations and findings all 8 Appeal from Orders stand dismissed. 8 Intervention Applications filed by Intervenor Society in all Appeal from Orders are disposed including the 8 Interim Applications filed by Appellants seeking interim relief.

27. Appeals From Orders are dismissed and disposed of in the aforementioned terms.

[MILIND N. JADHAV, J.]

28. After the above judgment is pronounced, Mr. Naphade, learned Advocate appearing on behalf of two Appellants whom he represents and Mr. Yadav, learned Advocate representing and espousing cause of remaining six Appellants (who were represented by Mr. Thorat) persuade the Court to stay the effect of this judgment and

continuation of interim relief in order to test the validity and legality of this judgment in the Superior Court.

29. Mr. Tamboly, learned Advocate appearing on behalf of Society (Intervenor) opposes continuation of interim relief in view of the order passed by the Division Bench of this Court previously in respect of the same cause of action, *inter alia*, pertaining to the suit structures belonging to Appellants and the Society having suffered for the past 26 years.

30. I have considered the request made by Mr. Naphade and Mr. Yadav both.

31. In the facts and circumstances of the present case where Appellants before me have enjoyed interim protection for a humongous period of 26 years from 1999 to 2025 (till passing of this judgment) and for the findings which are returned in the aforesaid judgment, I am not inclined to accept the request made by Mr. Naphade and Mr. Yadav to stay the effect of this judgment and continue the interim order any further. Said request is rejected.

[MILIND N. JADHAV, J.]

Ajay

Digitally signed
by AJAY
TRAMBAK
UGALMUGALE
Date: 2025.11.26
19:49:36 +0530