

Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.550 OF 2025
WITH
INTERIM APPLICATION NO.12563 OF 2025
IN
APPEAL FROM ORDER NO.550 OF 2025

M/s. Afsana Enterprises	Appellants /
Through Proprietor Mr. Jaffer Mohd. Sami Khan	.. Orig. Plaintiff
Versus	
The Assistant Municipal Commissioner and Ors.	Respondents
	.. Orig. Defendants

WITH
INTERIM APPLICATION (ST.) NO.35457 OF 2025
IN
APPEAL FROM ORDER NO.550 OF 2025

M/s. Royal Developers and Ors.	.. Applicants
IN THE MATTER BETWEEN:	
M/s. Afsana Enterprises	Appellants /
Through Proprietor Mr. Jaffer Mohd. Sami Khan	.. Orig. Plaintiff
Versus	
The Assistant Municipal Commissioner and Ors.	Respondents
	.. Orig. Defendants

WITH
APPEAL FROM ORDER (ST.) NO.34291 OF 2025
WITH
INTERIM APPLICATION (ST.) NO.34293 OF 2025
IN
APPEAL FROM ORDER (ST.)NO.34291 OF 2025

Mohd. Hanif Garib Khan	Appellants
	.. Orig. Plaintiff
Versus	
The Assistant Municipal Commissioner and Ors.	Respondents
	Orig. Defendants

WITH
INTERIM APPLICATION (ST.) NO.35453 OF 2025
IN
APPEAL FROM ORDER (ST.)NO.34291 OF 2025

M/s. Royal Developers and Ors.
IN THE MATTER BETWEEN:
Mohd. Hanif Garib Khan

.. Applicants
Appellants
.. Orig. Plaintiff

Versus

The Assistant Municipal Commissioner and Ors.

Respondents
Orig. Defendants

WITH
APPEAL FROM ORDER (ST.) NO.34297 OF 2025
WITH
INTERIM APPLICATION (ST.) NO.34298 OF 2025
IN
APPEAL FROM ORDER (ST.) NO.34297 OF 2025

Nagendra Singh

Appellants
.. Orig. Plaintiff

Versus

The Assistant Municipal Commissioner and Ors.

Respondents
Orig. Defendants

WITH
INTERIM APPLICATION (ST.) NO.35459 OF 2025
IN
APPEAL FROM ORDER (ST.) NO.34297 OF 2025

M/s. Royal Developers and Ors.
IN THE MATTER BETWEEN:
Nagendra Singh

.. Applicants
Appellants
.. Orig. Plaintiff

Versus

The Assistant Municipal Commissioner and Ors.

Respondents
Orig. Defendants

WITH
APPEAL FROM ORDER (ST.) NO.34300 OF 2025
WITH
INTERIM APPLICATION (ST.) NO.34301 OF 2025
IN
APPEAL FROM ORDER (ST.) NO.34300 OF 2025

Hasmat Ali Mohd. Ali Khan
Through CA Mr. Shahzad Ali Khan

Appellants
.. Orig. Plaintiff

Versus

The Assistant Municipal Commissioner and Ors.

Respondents

Orig. Defendants

WITH
INTERIM APPLICATION (ST.) NO.35456 OF 2025
IN
APPEAL FROM ORDER (ST.) NO.34300 OF 2025

M/s. Royal Developers and Ors.	.. Applicants
IN THE MATTER BETWEEN:	
Hasmat Ali Mohd. Ali Khan	Appellants
Through CA Mr. Shahzad Ali Khan	.. Orig. Plaintiff
Versus	
The Assistant Municipal Commissioner and Ors.	Respondents
	Orig. Defendants

WITH
APPEAL FROM ORDER (ST.) NO.34302 OF 2025
WITH
INTERIM APPLICATION (ST.) NO.34303 OF 2025
IN
APPEAL FROM ORDER (ST.) NO.34302 OF 2025

Shafitullah Chaudhary	Appellants
	.. Orig. Plaintiff
Versus	
The Assistant Municipal Commissioner and Ors.	Respondents
	Orig. Defendants

WITH
INTERIM APPLICATION (ST.) NO.35455 OF 2025
IN
APPEAL FROM ORDER (ST.) NO.34302 OF 2025

M/s. Royal Developers and Ors.	.. Applicants
IN THE MATTER BETWEEN:	
Shafitullah Chaudhary	Appellants
	.. Orig. Plaintiff
Versus	
The Assistant Municipal Commissioner and Ors.	Respondents
	Orig. Defendants

.....

- Mr. Vivek Pandey, Advocate for Appellants in all 5 Appeal from Orders and Interim Applications therein.
- Mr. Simil Purohit, Senior Advocate a/w. Mr. Akshay Doctor, Mr. Duj Jain, Ms. Neha Raut and Mr. Yash Jalandra i/b. Kiran Jain &

Co. Advocates for Respondent No.4 / Intervenors - Flat Purchasers in all 5 Appeal from Orders.

- Mr. Mayur Khandeparkar a/w Mr. Rohan Sawant, Mr. Ish Jain, Ms. Aarti Nishad and Mr. Soham Bhagwat i/b Mr. Rajan Yadav, Advocates for Intervenor – Developer in all 5 Intervention Applications.
- Mr. Sachin Vajale i/b. Ms. Komal Punjabi, AGP for State - MCGM
- Mr. N.C. Pawar, Court Receiver is present in Court.

.....
CORAM : MILIND N. JADHAV, J.
DATE : DECEMBER 11, 2025.

JUDGMENT:

- 1.** Heard Mr. Pandey, learned Advocate for Appellants, Mr. Purohit, learned Senior Advocate for Respondent No.4, Mr. Khandeparkar, learned Advocate for Intervenor - Developer and Mr. Vajale, learned Advocate for MCGM.
- 2.** This is a group of 5 Appeal from Orders which are having identical facts. By consent all 5 Appeal from Orders are heard finally and decided by the following judgement and order. On behalf of the 5 Appellants I have heard Mr. Pandey learned advocate at length and with his assistance perused the record. In all 5 matters challenge is maintained to the Section 351 notice dated 15.04.202 issued by Corporation, order dated 08.09.2025 passed by the designated officer and ad interim order dated 09.10.2025 passed by the learned City Civil Court in separate Suit proceedings instituted by the 5 Appellants.
- 3.** First Appellant before me is Afsana Enterprises claiming to be occupant of Structure No. 13. Appeal from Order No.550 of 2025

along with Interim Application No. 12563 of 2025 is filed by this Appellant.

4. Second Appellant before me is Shafitullah Chaudhary claiming to be occupant of Structure No. 60. Appeal from Order (St.) No.34302 of 2025 and Interim Application (St.) 34303 of 2025 is filed by this Appellant.

5. Third Appellant before me is Hasmat Ali Mohammed Ali Khan claiming to be occupant of Structure no. 54. Appeal from Order No.34300 of 2025 and Interim Application (St.) No. 34301 of 2025 is filed by this Appellant.

6. Fourth Appellant before me is Mohammed Hanif Gareeb Khan claiming to be occupant of Structure No. 57. Appeal from Order (St.) No.34291 of 2025 and Interim Application (St.) No. 34293 of 2025 is filed by this Appellant.

7. Fifth Appellant before me is Nagendra Singh claiming to be occupant of Structure Nos. 26 and 27. Appeal from Order (St.) No.34297 of 2025 and Interim Application (St.) No. 34298 of 2025 is filed by this Appellant.

8. In addition to the above, Five (5) Intervention Applications are filed by Intervenor – Developer i.e. M/s Royal Developers in the respective Appeal from Orders which are as follows:- (i) Intervention

Application (St.) No.35457 of 2025 is filed in Appeal from Order No.550 of 2025; **(ii)** Intervention Application (St.) No.35453 of 2025 is filed in Appeal from Order (St.) No.34291 of 2025; **(iii)** Intervention Application (St.) No.35459 of 2025 is filed in Appeal from Order (St.) No.34297 of 2025; **(iv)** Intervention Application (St.) No.35456 of 2025 is filed in Appeal from Order (St.) No.34300 of 2025 and **(v)** Intervention Application (St.) No.35455 of 2025 is filed in Appeal from Order (St.) No.34302 of 2025.

9. These five (5) Intervention Applications are taken up for hearing by consent of parties and are hereby allowed and disposed alongwith this common judgment. The Intervention of the Developer, since he is an affected party stands allowed. Developer is also heard while disposing of these 5 Appeals.

10. Amendment to Appeal from Orders for impleading the Developer is permitted to be carried out by the Advocate for Appellants forthwith. Necessary amendment is permitted to be carried out by the Advocate for Appellants in the Registry. Registry shall allow the same. Re-verification stands dispensed with.

11. All facts and circumstances in respect of the 5 Appellants before me are absolutely identical. All 5 Applicants, incidentally, refer to and rely upon identical documents in support of their case. For the sake of convenience, reference is made to the facts and documents

including dates and events in the case of Afsana Enterprises in Appeal from Order No.550 of 2025 which is argued at length on behalf of Appellants.

12. Suit plaint is filed in September 2025 wherein challenge is maintained to notice under Section 351 of MMC Act dated 15.04.2025 and speaking order dated 18.09.2025 passed by designated officer of Corporation in respect of the suit structure. It is averred in the plaint that suit structure is falsely alleged to be unauthorized construction and the notice is bad in law on the premise that in some previous proceedings similar notices which were received which were challenged before this Court and by order dated 12.02.2019 status quo was directed to be maintained. Reference is also made to another Suit No.134 of 2009 between private third parties pertaining to the same larger land on which the notice structures are situated being *custodia legis* and wherein several orders have been passed by this Court. This position is admitted. The land is *custodia legis*. It is contemplated by Plaintiff that there is no illegality of the structure and its construction and it is in existence prior to the datum line (01.01.1961) and therefore it stands protected. On this ground the Section 351 notice and speaking order is challenged in the suit proceedings. Identical suits are filed by all 5 Appellants wherein it is admitted that this Court has appointed Court Receiver in respect of the land on which the suit structure is situated despite which the Court Receiver is not impleaded

as proper and necessary party in the suit proceedings. This is another flaw. Claim is that all Appellants / Plaintiffs are tenants of the erstwhile landlord of the suit land and they have documentary evidence in the form of a singular rent receipt to show that their structure was in existence prior to the datum line and therefore stands protected.

13. The speaking order dated 08.09.2025 in the case of Afsana Enterprises i.e. Appeal from Order No.550 of 2025 is appended at page 162 of the Appeal from Order. Minutes of personal hearings dated 30.05.2025 are appended at page no. 160. There are 8 points of consideration namely the documentary evidence produced by Appellants Afsana Enterprises which are considered and analyzed in the speaking order. Similar eight documents are relied upon by all 5 Appellants. It is seen that the 8 documents have been considered in detail and on their merits and case of Appellants for eligibility stands outrightly rejected by the designated officer concluding that the suit structures are all unauthorized and illegal concluding that neither there is any sanctioned plan approved by the Corporation nor any authentic documentary evidence to prove its existence prior to the datum line 01.01.1961 to consider authenticity of the commercial structure of Appellant Afsana Enterprises claiming admeasurment of 11.22 meter x 9.62 meter x 3.7 meter height situated at CTS No. 444 , 444/1, 444/2 and 445 in village Oshiwara, Ram Janath Singh

Compound, Jogeshwari West Mumbai 400102.

14. Identical is the case of Mohammed Hanif Gareeb Khan, occupant of Structure No. 57 in Appeal from Order (L) No.34291 of 2025, save and except the dimensions of his structure which admeasure 6.32 meters x 2.78 meters x 5.30 meters height. In the case of Nagendra Singh once again all facts are identical except the dimensions of his two notice structures i.e. Gala no. 26 admeasuring in 7.19 meters x 4 meters x 3.71 meters and Gala No. 27 admeasuring 3.8 meters x 1.82 meters + 1.8 meters x 1.6 meters x 4.3 meters (height).

15. Identical is the case of Hasmat Ali Mohammed Ali Khan, occupant of Structure No. 54 in Appeal from Order (L) No. 34300 of 2025 admeasuring dimensions 4.1 meters x 3.5 meters x 4.4 meters height and Shafitullah Chaudhary, occupant of Structure No.60 in Appeal from Order (L) No. 34302 of 2025 admeasuring dimension 6.32 meters x 2.9 meters x 5.33 meters height.

16. Speaking order is in respect of all 5 Appellants before me is also identical taking into consideration their respective documents. It is *prima facie* seen that only 3 out of 8 documents that Appellants have referred to and relied upon to show existence of their respective structures prior to datum line are material but on close scrutiny they do not aid and assist the Appellants' case at all. The first document

referred to and relied upon is a stray copy of rent receipt dating back to 1992 and January to March 2000. The second document is a copy of electricity bill of Adani Electricity for the month of February 2025 and the third document is an old electricity bill of BSES Limited of November 1992. These documents are appended at page Nos. 49 onward. It is seen that the rent receipt does not show or prove any right or entitlement of Appellants whatsoever. It is vague and thoroughly insufficient on the face of record. It is in the name of Afsana Enterprises and pertains to a gala without any number admeasuring 40 feet x 40 feet. The second rent receipt dated 05.04.2002 is issued by one Bhavsar Construction Private Limited. Similar rent receipt in the name of Afsana International is also relied upon. The electricity bill of February to March 2025 appended at page No. 78 is in the name of Afsana Enterprises whereas the old electricity bill is in the name of Afsana International. The addresses in the electricity bill do not match neither do they prove entitlement or location of Appellants' alleged structure. Merely on the basis of these above 3 documents identically relied upon by all 5 Appellants they claim existence of their respective structures on the datum line i.e. 01.01.1961. It is *prima facie* impossible to consider the Appellants case for eligibility on such frivolous documents. It has been therefore rightly rejected by the learned designated Officer with reasons and by the Trial Court. The other 5 documents relied upon are Court orders which

I will deal with in detail hereunder.

17. I will now refer to the various proceedings in the interim which virtually seals the fate of the Appellants' case seeking to claim entitlement though in the suit plaint there is only a stray reference to only one of the suit proceedings. Respondent No. 4 and Intervenor Developer have placed on record 5 orders passed by this Court in previous suit proceedings which are dated 02.12.2010 (Coram: S.C.Dharmadhikari, J.) 04.12.2017 (Coram: S.J. Kathawalla, J.), orders dated 12.06.2018 and 15.06.2018 (Coram: G.S. Patel, J.) and a recent order dated 22.02.2024 (Coram: Sandeep V. Marne, J.) at page 367 which confirm that due process of law has been followed by the Corporation to the hilt in respect of all 5 Appellants' notice structures and all similarly placed structures in the past for more than 2 decades and only pursuant thereto the impugned Section 351 MMC Act notice has been issued and the designated officer has determined the Appellants' case. Therefore it now cannot lie in the mouth of the Appellants to re-agitate that due process of law should be followed once again before evicting them from the notice structures which are all determined unauthorized and illegal by this Court. The land on which they are situated is admittedly *custodia legis* since 2010. The land was acquired and handed over to MMRDA during which enterprising persons like the Appellants illegally and unauthorized

trespassed onto the land and put up their notice structures illegally and the aforesaid orders are clearly suppressed by all 5 Appellants before me in their respective suit proceedings. Therefore Appellants deserve no mercy whatsoever from this Court. They have approached the Court with unclean hands and after rejection of ad-interim relief they have approached this Court on the eve of summer vacation and have procured ad - interim relief of no coercive steps to be taken against them in respect of the notice structures protecting them from demolition and eviction.

18. All 5 Appeal from Orders are heard fully at length by this Court. There are substantive facts which virtually shake the conscious of this court. It is expected of the Appellants to come clean but the Appellants have shown scant regard to the orders passed by this Court. When admittedly even according to Appellants the property is *custodia legis*, the Appellants have defied every rule in the book rather all 5 Appellants have followed suit and have obstructed the administration of justice. Court Receiver is not impleaded as a party to all 5 Suit proceedings. My attention is drawn to Interim Application (L) No.35457 of 2025 filed by proposed respondent Developer who is Applicant. The said Applicants is M/s Royal Developer a partnership firm who is the present developers of the land pursuant to consent terms and order dated 22.02.2024 passed by this court in Suit No. 134

of 2009. The first and foremost objection of all contesting Respondents against Appellants is that they are obstructing development of the project and apart from them, all other occupants and tenants on the property have either agreed to vacate and / or have signed Permanent Alternate Accommodation Agreement (for short "**PAAA**") with the developer. Most shocking is the fact that proprietor of Appellant Afsana Enterprises has himself executed PAAA agreement in respect of Gala No. 13 i.e. notice structure, copy of which is appended at page 26 of the Interim Application of Developer. If that is the case, case of such Appellant for any further determination cannot be sustained at all. It is nothing but a sheer abuse of the due process of law by Appellant Afsana Enterprises.

19. I have perused the above PAAA wherein there is a clear reference to Structure No. 13 in respect of which alternate accommodation is offered. Mr. Pandey has no answer to this save and except to admit it. This Appellant has unnecessarily wasted valuable time of the court in arguing about his entitlement. Idea is to delay and stall development for obvious reasons. The developer has executed PAAA i.e. alternate accommodation in respect of the very same premises i.e. Structure No. 13. Similar is the case in respect of another Appellant Mohammed Hanif Garib Khan. His PAAA agreement is placed on record in the reply of Respondent No. 4 filed and appended

at Exhibit 'R' page 413. Hence these two Appellants before me cannot have any grievance whatsoever to re-agitate the same issue. In so far as the remaining 3 Appellants are concerned, their case will stand on the merits and strength of their own documents which one also *prima facie* rejected. These remaining 3 Appellants cannot stall development of the project which has seen the light of day after decades of Court litigation and pursuance by Flat Purchasers who have invested their hard earned monies and have struggled to get their flat for the past more than 3 decades since 1993.

20. Mr. Purohit and Mr. Khandeparkar have both persuaded me to consider the orders dated 02.12.2010, 04.12.2015, 12.06.2018, 15.06.2018, and order dated 22.02.2024 passed by this Court. On behalf of contesting Respondents, reliance is placed on order dated 02.12.2010 in Suit No.134 of 2009 appended at page 298 wherein paragraph Nos. 8 and 9 of the said order are relevant. They are reproduced below for immediate reference:-

“8] Original defendant Nos.1, 2 and 3 so also other defendants are duly served. Barring the above affidavits and that of the MMRDA, there are no affidavits filed in reply to this notice of motion. The MMRDA in the affidavit in reply has clarified that it is a special planning authority for the area and as per the sanctioned plan the suit property was acquired and on 21st April 1995 an agreement of lease was executed in favour of defendant No.1. Ms.Bhagalia on instructions states that in pursuance of the scheme implemented under the Maharashtra Regional and Town Planning Act, the property in question is a final plot which is allotted to the owner as per the sanctioned scheme. However, the owner came forward to execute the a lease deed as a lessee of MMRDA and that is how the MMRDA

executed lease deed. It also granted certain permissions and approvals. However, it noted that the construction work proceeded up to plinth level. Thereafter a check and inspection was undertaken at which it was found that there were few changes made. The MMRDA in para 6 and 8 of this affidavit has stated as under:-

“6. MCGM by its letter dated 20/9/2005 informed MMRDA that – MCGM had granted C.C. Upto top of basement on 22/5/2000. Further, C.C. Was not granted by MCGM. In a letter received by MCGM from Architect A.V.Vora it was mentioned that the work beyond top of basement was carried out without his supervision. The concerned developers had framed forged document of CC for which MCGM was thinking for lodging a complaint against developer. MCGM had also prosecuted the developers under section 53 of MRTP Act, 1966 on 5/8/2005 for work carried out beyond approval and beyond CC. MCGM therefore informed MMRDA not to approve/ grant/ sanction any proposal on plot under referenece until the work carried out beyond approval is completely regularised and the matter of forged document is sorted out finally. From the above, it is clear that the building constructed on the suit plot is unauthorised building.

“7. Meanwhile, Mr.Nilesh Tanna, Proprietor of the M/s.Tanna Construction Company by letter addressed to the Hon.Chief Minister of Maharashtra stated that his company acquired development rights for the above mentioned project in July 2000. MMRDA by its letter dated 6/10/2005 requested Mr.Tanna to furnish a copy of the permission granted by MMRDA for such transfer and receipt of the payment made to this office towards the transfer fee payable to MMRDA for such transfer. No reply to this letter was received from Mr.Tanna.”

“8. The plaintiffs claim that by virtue of the amounts alleged to have paid by the plaintiffs to the developer under the allotment letters, the plaintiffs have a charge on the property. I emphatically deny that any such charge can be claimed on the land belonging to MMRDA. The plaintiffs have no rights whatsoever over the land belonging to MMRDA. The plaintiffs have no privity of contract with MMRDA. MMRDA is entitled to re-enter the land and terminate the licence of the developer.”

9] Further, in the affidavit MMRDA has clarified that the construction at site has not been authorised or permitted by it.

The building constructed on the plot is unauthorised.”

21. The next court order is dated 04.12.2015 appended at page 306. Paragraph nos. 5 and 6 of this order are directly relevant which show how the subject property is to be dealt with further. It reads thus:-

5. The learned Advocate appearing for Defendant Nos. 4, 5 and 6 has tendered an Affidavit filed by his Clients and has contended that by the said order dated 2nd December, 2010, the Court Receiver is not directed to remove the encroachments, which were already in existence on the date of passing of the order i.e. 2nd December, 2010.

6. When this Court inquired from the learned Advocate appearing for the Defendant Nos. 4, 5 and 6 whether he is supporting the encroachers, who had already encroached the Suit land on the date of the passing of the order dated 2nd December, 2010, he submits that he is not supporting any encroachers on the Suit land. I therefore fail to understand the above submission advanced by the learned Advocate appearing for the Defendant Nos. 4, 5 and 6. From prayer clause (a) of the Notice of Motion read with the directions contained in paragraph 12 of the order dated 2nd December, 2010, it is established beyond any doubt that the Court Receiver has to interalia move the Corporation for removal of the encroachments on the Suit land, failing which it would be impossible for him to proceed and implement the said order by putting up a fencing and compound wall on the Suit property. In view thereof, the following order is passed :

i. The Mumbai Municipal Corporation is directed to remove encroachments carried out by the illegal occupants on the Suit property within a period of eight weeks from today with the assistance of local police.

ii. Upon the said encroachments being removed, the Plaintiffs shall deploy the security guards at the Suit site.

iii. The cost of this Report quantified at Rs.3000/- shall be paid by the Plaintiffs to the Court Receiver within a period of one week from today.

iv. The Court Receiver's report is accordingly disposed of.

22. The next relevant order is 12.06.2018 wherein paragraph

Nos. 2-8 are directly relevant to the cause of action in the present case.

It reads thus:-

"2. What so very greatly troubles the MCGM is this question — and I quote this directly from its prayer —

“That the Hon’ble Court may be pleased to clarify whether Corporation is required to follow due process of law in respect of removal of any authorised structures in view of order dated 2nd December 2010 and 4th December 2015”.

3. This Motion with this prayer is, to put it mildly, astonishing. The Corporation is an instrumentality of the State. The city it governs is still, presumably, part of the State of Maharashtra, in turn part of the Union of India. I trust the city has not, with the Corporation at its helm, without our noticing it, seceded from the Union or raised a flag of independence. That necessarily means that the writ of the Constitution applies to the Brihanmumbai Mahanagar Palika; and that in turn means that Part III of the Constitution of India applies to it as an instrumentality of the State.

4. On 1st September 2016 the matter was listed before Mr Justice KR Shriram. He was apparently solemnly presented this question by Senior Counsel engaged by the MCGM. Mr Justice Shriram felt that it would be appropriate to seek a clarification from Mr Justice Kathawalla and the matter has remained there since. No application has been made before Mr Justice Kathawalla for a clarification. While I do appreciate the approach preferred by Mr Justice Shriram, I am myself not persuaded to follow it. As is usual with the orders of Mr Justice Kathawalla, there is nothing remotely ambiguous in what he said on 4th December 2015. I do not believe any clarification is required. Indeed, I believe such a course is singularly ill-advised.

5. The reason for all this is only one. The matter pertains to a very substantial stretch of land at Oshiwara. The Plaintiffs are in pursuit of a declaration that they are the purchasers of units shown in the schedule to the Plaint as Exhibits C-1 to C-7 in a commercial development called ‘Sharda Complex’ to be constructed on CTS Nos 444, 444/1, 444/2 and 4445 at Swami Vivekananda Road, Village Oshiwara, Jogeshwari, Mumbai 400102. The 1st Defendant is a construction company. Defendants Nos. 2 and 3 are its directors. These three Defendants claimed to hold lease from MMRDA. The 4th Defendant is a partnership firm of Defendants No. 5, 6 and 7 and there is said to be some arrangement between Defendants Nos. 1 to 3 and 4 to 7.

6. As long ago as 2nd December 2010 there was some case

placed before the Court of existing encroachments on this land. Not only is this noted in paragraphs 11 and 12 of SC Dharmadhikari J's order, to which I will turn presently, but there is reflection of this in paragraph 5 of that order as well, where the Plaintiffs sought to justify the application for appointment of a Court Receiver by pointing to in the existence of the encroachments.

7. In paragraphs 8 and 9 of the 2nd December 2010 order, SC Dharmadhikari J noted that the statutory authorities said they had granted limited permission (a commencement certificate upto basement level) for development on site. This meant then, and means now, that all other constructions or structures on the site are without necessary sanctions and permissions, i.e. they are encroachments. In paragraphs 11 and 12, after a exhaustive detailing of the background, SC Dharmadhikari J said this:

“11. After having heard learned Counsel appearing for parties at great length and finding that the position as set out by the MMRDA in its affidavit and the contents of further affidavit filed by the Plaintiffs, demonstrate that it is just and convenient to appoint Court Receiver, High Court, Bombay as receiver of the said property. The motion is, therefore, made absolute in terms of prayer clause (a). Until the Receiver takes possession, there will be an injunction in terms of prayer clause (f).

12. It is clear that the Court Receiver will be appointed of the land and structure which is an unauthorised structure. Further, the land is stated to be encroached and the encroachments are increasing day by day. It is for this additional reason as well, I am appointing Court Receiver of the suit property. However, upon his appointment and taking possession, Receiver will have to carry out survey and measurement of the land as part of it is open and vacant. In such circumstances, all statutory authorities, including the MMRDA should render assistance to the Court Receiver in carrying out measurement and survey of the land. Further, Mumbai Municipal Corporation, office of the Collector Mumbai Suburban District and local police station to render such assistance as is necessary to the Receiver to carry out survey and measurement and put up a fencing and compound wall. Mr Sen submits that at the first instance the costs, charges and expenses for this exercise will be undertaken by the Plaintiffs, subject to final orders and directions in the suit.”

8. I am told that a survey has been in fact carried out by the Collector and City Survey Officer. This notes the existence of

the encroachments. The Receiver has subsequently filed a report saying that there are encroachments."

23. These orders narrate the history and trajectory of the land which was acquired in 1994 by MMRDA and how the same was to be subsequently dealt with under the orders of the court. This history is relevant as it is suppressed by the Appellants. It is seen that pursuant to detention orders a show cause noted 10.09.1999 was issued to affected persons proposing forfeiture of the entire suit land comprised in CTS Nos.444, 444/1, 444/2 and 445 of Village Oshiwara. In pursuance thereof the competent authority attached the entire property by order dated 22.03.2001. Prior to this action being taken one M/s Bhavsar Construction Private Limited (for short "**Bhavsar Construction**") had purchased the said property from its erstwhile owner Arihant Estate and Investment Private Limited by agreement dated 17.07.1993. The said Bhavsar Construction issued allotment letters after receiving consideration to various proposed Flat Purchasers. The development however did not fructify, hence the Flat Purchasers filed Civil Suit No. 134 of 2009 in this court. It is seen that on 02.12.1994 MMRDA acquired the suit property from Bhavsar Constructions and after completion of acquisition proceedings possession was taken. What is crucial is that ownership right in the said land since 1994 till date vests in MMRDA. However upon application by Bhavsar Constructions MMRDA executed lease dated

21.01.1995 and granted license and permission to Bhavsar Construction for carrying out development and construction on the said land. Thereafter subsequent to the above, development rights after execution of multiple agreements and JV agreement the development contract was been awarded to M/s Royal Developers, the Intervenor before me. Thereafter on 10.09.1999 SAFEMA issued show-cause-notice to Bhavsar Construction and corresponding detention order was issued by SAFEMA authorities and the competent authority by order 23.02.2001 directed forfeiture of the said land. The order of forfeiture was challenged before the Appellate Tribunal unsuccessfully. Thereafter this Court taking into consideration all above facts and attachment of the land by SAFEMA by order dated 02.10.2012 passed in Suit No. 134 of 2009 appointed Court Receiver High Court Bombay a Receiver of the said entire property with a direction to take possession and carry out measurement and survey and put fencing and compound wall to avoid further encroachments. Court Receiver made Report No. 629 of 2015 before this Court (Coram: S.J. Kathawalla, J.) and on 04.12.2015 this Court directed Court Receiver to take necessary steps alongwith Corporation for removal of encroachments from the said land. In the meantime Suit No. 134 of 2009 was heard and in Notice of Motion No. 2381 of 2011 this Court passed order dated 12.06.2018. Paragraph Nos.8, 9, 11 to 13 of this order are once again directly relevant to the facts of the present case and are reproduced

below for immediate reference:-

“8. I am told that a survey has been in fact carried out by the Collector and City Survey Officer. This notes the existence of the encroachments. The Receiver has subsequently filed a report saying that there are encroachments.

9. But everybody already knew that. The question was what was to be done about those encroachments. The matter was listed before Kathawalla J on 4th December 2015. After elaborately setting out the reliefs in the Motion before Dharmadhikari J and paragraphs 11 and 12 of that order, Kathawalla J noted that the Court Receiver had acted on the order, demarcated the suit property and carried out measurements. The Court Receiver had complained to the MCGM about the encroachments. The Corporation had failed to remove these I am unable to see the slightest ambiguity in Kathawalla J's directions. The Mumbai Municipal Corporation has been ordered to remove the encroachments. Even the MCGM agrees that there is nothing ambiguous about this directions. What the MCGM wants to know is whether Mr Justice Kathawalla ordered the planning authority to act in an autocratic, despotic and tyrannical manner not warranted by law, or whether his order requires the MCGM to follow the due process of law. The Motion is not just misconceived. It is utterly reckless, and I must confess it seems to me to be a quite considerable triumph of courage over legal understanding.

10. xxxxxx

11. I am unable to see the slightest ambiguity in Kathawalla J's directions. The Mumbai Municipal Corporation has been ordered to remove the encroachments. Even the MCGM agrees that there is nothing ambiguous about this directions. What the MCGM wants to know is whether Mr Justice Kathawalla ordered the planning authority to act in an autocratic, despotic and tyrannical manner not warranted by law, or whether his order requires the MCGM to follow the due process of law. The Motion is not just misconceived. It is utterly reckless, and I must confess it seems to me to be a quite considerable triumph of courage over legal understanding.

12. That Motion by the MCGM must suffer one of only two possible fates. It must be withdrawn, or it must be dismissed. One of those consequences will be without an order of costs. The other will not.

13. I will list that Motion (L) 1819 of 2016 on Friday, 15th June 2018 for orders. On that date and as a condition precedent to not imposing an order of costs I expect a commitment from the ward officer concerned as to the time within which the

MCGM will comply with the Kathawalla J's directions in his order of 4th December 2015. I am making it abundantly clear 48 hours in advance of the next date that a failure to give me that commitment and a failure to comply or abide by that commitment will invite an order of contempt, if necessary suo motu, at very highest levels."

24. Thereafter on 15.06.2018, further directions were passed by this Court wherein it was directed that if any application is heard by City Civil Court then the Plaintiff in Suit No.134 of 2009 should be joined as proper and necessary party including the Court Receiver. Therefore in view of the above directions and the orders alluded to hereinabove the suit proceedings instituted by the 5 Appellants are bad for non joinder of proper and necessary parties. Directions contained in Paragraph Nos. 2 and 3 of the order dated 15.06.2018 are directly relevant to the cause of action at hand qua the 5 Appellants before me. At the cost of repetition they are reproduced below for immediate reference. They read thus:-

"2. I am informed that there are 108 structures on the plot in question. There is no question of any of these structures being 'authorized' in view of the factual background to the matter which I noted in my order of 12th June 2018. By this I mean that there could not be any structure that has in a regular fashion received Municipal Corporation of Greater Mumbai's ("MCGM") development permission, i.e., commencement certificate, IOD, completion certificate and occupation certificate. This entire property has been in receivership, and when the MCGM therefore acts in accordance with law for the removal of these structures, it will be acting as an agent of the Receiver. There will thus be no question of regularizing any of these structures in situ. Whatever may be the MCGM policy for rehabilitation or re-accommodation of the occupants in accordance with the existing MCGM norms and policies, having regard to the applicable cut-off dates or datum lines, that policy will undoubtedly be followed; but, at the cost of repetition, no structure can be regularized on site and on this plot. If a further reason is required for this, it is that since 2nd December 2010 this has been the legal situation and the property has been in

custodia legis. It is no answer to say that there were structures on the plot prior to the date of that order. The test is not, in this case, of the date of the order. The test is whether any of the structures were authorized in accordance with law. At best, the question of date, i.e. how long a structure has been there may result in an occupant being entitled to rehabilitation in accordance with the existing MCGM policy but nothing further.

3. Mr Khandeparkar expresses the apprehension that any action by the MCGM will result in several applications being moved before the City Civil Court. In exercise of the Ordinary Original Civil Jurisdiction of this Court, I cannot injunct or restrain the filing of any such suit nor can I direct the City Civil Court not to entertain such applications or even to have them transferred to this Court. It goes without saying that the City Civil Court will undoubtedly exercise its discretion having regard to all circumstances, specifically the background, this order, as also the order of 12th June 2018 and all previous orders. The MCGM will be at liberty — for the MCGM is bound to be a party to such action — to bring these orders to the notice of the City Civil Court. The City Civil Court will also in hearing such application ensure that the Plaintiff is given notice and is joined as a party in view of the factual background. The consequence of receivership will follow: since the MCGM is acting as an Agent of the Court in implementing directions of this Court to remove the encroachments (as directed by Kathawalla J), I have no manner of doubt that the City Civil Court will appreciate that the Court Receiver will be a necessary party to any such suit by an occupant in respect of the MCGM's removal action.”

25. Thus on the basis of the above directions, the Appellants will have to prove the existence of their structure on the datum line on the basis of cogent material and evidence. In the above background, by order dated 10.10.2018 the competent authority raised the attachment by SAFEMA without prejudice to the outcome of Civil Suit No. 134 of 2009 before this court and on 22.02.2024 by virtue of compromise between all parties Suit No. 134 of 2009 came to an end but Court Receiver continued for the purpose of removal of encroachments from the said property. Thus by virtue of above orders the said property is *custodia legis*. In the above background the Appellants before me

cannot seek one more round of litigation demanding to follow the due process of law. The 5 suit proceedings filed by Appellants are nothing but a sheer abuse of the due process of law. They are guilty of suppressing material information which was to their knowledge and have filed the suit proceedings to obstruct development. 2 out of the 5 Appellants namely Afsana Enterprises and Mohammed Hanif Garib Khan despite executing PAAA with the Developer in respect of their very structures have still filed fresh suits which are false and frivolous and without any authority and only to obstruct development with *malafide* intent. These suits are filed merely as an extortionist tactic without any authority in law to create nuisance and harassment. In so far as the other 3 Appellants are concerned they have to prove their eligibility and succeed on the strength of their documents to show existence of the notice structures on the datum line. None of the 3 documents out of 8 relied upon by them either prove the existence of their structures on the datum line. The remaining 5 orders are the aforestated 5 orders passed by this Court in previous proceedings. The suits which are filed are not only false and frivolous but a blatant abuse of the process of Court. It is held that fraud and justice can never dwell together and fraud and deceit ought to benefit none. Reliance is placed on the observations of this court in similar circumstances on paragraph Nos. 16 to 21 in the case of ***Alok Chopra Vs. Ravi Fisheries***

Limited and Ors. ¹ . For the sake of reference, the said paragraphs in the Appeal from Order are reproduced below:-

“16. Our Courts have repeatedly held that where a person comes to Court with a case based on a false Suit, his case can be summarily thrown out at any stage of the litigation. He is bound to be candid with the Court withholding a vital documents — and minutes before Arbitral Tribunal were certainly vital documents — in order to gain advantage tantamount to a fraud on the Court and on the other side. This is the view of the Supreme Court in SP Chengalvaraya Naidu v Jagannath & Ors. 1 In Ashok Leyland Ltd v State of Tamil Nadu and Another,2 the Court said suppression of a material document amounts to a fraud on the Court.

17. In A.V. Papayya Sastry and Ors v Government of A.P. and Ors.,3 the Supreme Court said this:

“21. There is an essential distinction between mistake and trickery. The clear implication of the distinction is that an action to set aside a judgment cannot be brought on the ground that it has been decided wrongly, namely, that on the merits, the decision was one which should not have been rendered, but it can be set aside, if the court was imposed upon or tricked into giving the judgment. It has been said; Fraud and justice never dwell together (fraus et jus nunquam cohabitant); or fraud and deceit ought to benefit none (fraus et doles nemini patrocinar debent). (emphasis supplied)

18. The emphasis portion cited above makes it clear that the Supreme Court as a matter of law has held that fraud and justice are the most implacable enemies. They cannot dwell together. Fraud speaks to deception with a view to securing unfair or undeserved benefit or advantage. All proceedings, even the most solemn, are vitiated by fraud. In Dalip Singh v State of U.P.,4 the Supreme Court said that a litigant who attempts to pervert justice and comes to Court with tented hands is dis-entitled to all reliefs. More pointedly, in Oswal Fats and Oils Limited v Additional Commissioner (Administration), Bareilly Division, Bareilly and Ors;5 the Supreme Court said there a person who suppresses material information has no right to be heard on the merits of his grievance. Coming now to the order under Appeal, I do not believe the learned Judge can be faulted, although the order will have be set aside. He is as much a victim of the fraud as the Appellants and other parties to the Arbitration. In Hari Narain v Badri Das,6 the Supreme Court said that in dealing with said although in the context of

¹ Appeal from Order No (St.) 15040 of 2017

Applications for special leave, in the Court naturally takes statements of facts stated in the Petition at face value and making untrue a misleading statements is a betrayal of the confidence of the court. In Rajabhai Abdul Rehman Munshi v Vasudev Dhanjibhai Mody,⁷ the Supreme Court said clearly that he who approaches a Court seeking an equitable or a discretion indemnity must come with clean hands. If there is an attempt to mislead a Court by false or untrue statement or withholding true information which would have a bearing on the question of exercise of discretion, the Court would be justified in refusing to exercise that discretion.

19. This problem of litigants fling false cases has been recently taken very serious note of by the Supreme Court in at least two relatively recent decisions. In both cases, the Supreme Court has in the clearest possible terms said that no Court should countenance or permit the continuance of a litigation based on a falsehood. In Sciemed Overseas Incorporated v BOC India Ltd,⁸ more recently, in Dnyandeo Sabaji Naik & Anr v Pradnya Prakash Khadekar & Ors,⁹ Dr Chandrachud, J said in paragraph 14:-

“14. Courts across the legal system — this Court not being an exception — are choked with litigation. Frivolous and groundless filings constitute a serious menace to the administration of justice. They consume time and clog the infrastructure. Productive resources which should be deployed in the handling of genuine causes are dissipated in attending to cases filed only to benefit from delay, by prolonging dead issues and pursuing worthless causes. No litigant can have a vested interest in delay. Unfortunately, as the present case exemplifies, the process of dispensing justice is misused by the unscrupulous to the detriment of the legitimate. The present case is an illustration of how a simple issue has occupied the time of the courts and of how successive applications have been filed to prolong the inevitable. The person in whose favour the balance of justice lies has in the process been left in the lurch by repeated attempts to revive a stale issue. This tendency can be curbed only if courts across the system adopt an institutional approach which penalises such behaviour. Liberal access to justice does not mean access to chaos and indiscipline. A strong message must be conveyed that courts of justice will not be allowed to be disrupted by litigative strategies designed to profit from the delays of the law. Unless remedial action is taken by all courts here and now our society will breed a legal culture based on evasion instead of abidance. It is the duty of every court to firmly deal

with such situations. The imposition of exemplary costs is a necessary instrument which has to be deployed to weed out, as well as to prevent the filing of frivolous cases. It is only then that the courts can set apart time to resolve genuine causes and answer the concerns of those who are in need of justice. Imposition of real time costs is also necessary to ensure that access to courts is available to citizens with genuine grievances. Otherwise, the doors would be shut to legitimate causes simply by the weight of undeserving cases which flood the system. Such a situation cannot be allowed to come to pass. Hence it is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that the legal system is not exploited by those who use the forms of the law to defeat or delay justice. We commend all courts to deal with frivolous filings in the same manner.” (emphasis supplied)”

20. The emphasised portions above making clear that these observations are not limited to either the case that was before the Supreme Court or cases where execution is delayed. The Supreme Court said in the clearest possible terms that frivolous and groundless filings constitute a serious menace to the administration of justice. It also said that where the dispensing of justice is misused by the unscrupulous to the detriment of the legitimate, the Court must deal with these with the firm hands. In the words of the Supreme Court a strong message must be conveyed that Courts of justice will not be allowed to be disruptive by litigative strategies designed to profit from delays. Looking ahead the Supreme Court said that the time for remedial action is now else, else our society will breed a legal culture based on evasion. It then said that it is the duty of the every Court to firmly deal with such situation. I proceed to do precisely that. The order under Appeal is set aside. That however will not be enough. The Suit itself is utterly frivolous and utterly false. It is designed only to stall arbitral proceedings. It is based on an entirely false premise. It is fled without authority and the lack. No authority shown and the lack of authority is not denying and cannot be denied. There is wanton and material suppression.

21. This Plaintiff, Respondent No.1 and the person behind Respondent No.5 Shunal Kapur are deserving of no sympathy or the exercise of discretion. In fact they are not even entitled to a hearing. What they must receive instead, quite apart from dismissal is an order of costs significant enough to make it clear that this Court will not under any circumstances allow either its time to be wasted in this fashion or for it or any of this Court within its jurisdiction to be taken altogether for a ride in this fashion. The Appeal succeeds. In addition to setting aside the

order, the Suit itself is dismissed forthwith. This is accompanied by an order of costs in the amount of Rs.25,00,000/- by Respondent No.5. Mr Khandeparkar for the Appellants immediately waives costs and says that these may be awarded to any charitable cause. Of this amount Rs.15,00,000/- is to be paid within two weeks to the Tata Memorial Hospital, Mumbai, which is in need of funds. Rs.5,00,000/- is to be paid to the Bombay High Court, Law Library, which is in need of funds for purchase of books and online materials. The remaining Rs.5,00,000/- be paid to NAAM Foundation which thus exemplary work in draught affected areas in Maharashtra.”

26. I need not say much since fraud speaks to deception with a view to securing unfair or undeserved benefit and advantage and other proceedings even the most solemn nature stand vitiated by fraud. Supreme Court has as matter of law held that fraud and justice are the most implacable enemies. In the present case it is not understood as to why despite having executed PAAA agreements with the developer, the Appellants Afsana Enterprise and Mohammed Hanif Garib Khan have filed the suits in the City Civil Court by withholding true information which would have a bearing on the question of exercise of discretion. Courts are choked with litigation and such suits virtually constitute a serious menace to the administration of justice. Time has come to send a strong message to such litigants who by procuring ad-interim relief and stalling development have their way to the detriment of the legitimate persons in such cases who wait for decades for their flats. Imposition of exemplary costs is in my opinion the only necessary instrument which should be deployed to teach such litigants like present Appellants a lesson and also to prevent filing of such cases in

future. The legal system cannot be allowed to be exploited by the likes of the litigants before me who use the forms of the law to defeat and delay justice. The Appellants / Plaintiffs before me in the above facts deserve no sympathy or exercise of discretion either. Case of the Appellants namely Shafitullah Chaudhary, Hasmat Ali Mohammed Ali Khan and Nagendra Singh also cannot be accepted by the court on the strength of the documents which are scrutinized by the designated officer in their respective cases. This is one more growing trend of litigation which needs to be now curbed. In Mumbai due to escalation in real estate prices, such proceedings are mushrooming day by day. Encroachers and trespassers without any authority of law occupy land and then negotiate alternate accommodation and inevitably delay development. It is seen that suits are filed in multiple numbers in the City Civil Court in a group / bunch and only the best case is argued so that benefit can be extended to the weak cases in the group. In these 5 Appeals though I have passed a common order, I have gone through the documentary evidence of all the 3 other Appellants before me namely Shafitullah Chaudhary, Hasmat Ali Mohammed Ali Khan and Nagendra Singh and I do not have the least doubt in my mind that these Appellants have failed to show the existence of their structures on the datum line.

27. For all the above reasons, the 5 Appeal from Orders therefore fail. However this is not enough in the facts of the present case. The 5 suits which are filed in the City Civil Court are utterly frivolous and groundless which are designed only to stall development. 2 out of the 5 Appellants have already executed PAAA despite which they are prosecuting the Appeal for obvious reasons. I would like to once again draw attention to paragraph No. 19 of the decision of this Court in Appeal from Order (St.) 15040 of 2017. The said paragraph is reproduced in paragraph No. 25 of this judgment hereinabove. In paragraph No. 19 thereof, two decisions of the Supreme Court have been referred. In the case of *Sciemed Overseas Incorporated (Supra)* and *Dnyandeo Sabaji Naik & Anr (Supra)* the Supreme Court has stated in the clearest possible terms that frivolous and groundless filings constitute a serious menace to administration of justice. It also said that where the dispensing of justice is misused by the unscrupulous to the detriment of legitimate, the Court must deal with these with firm hands. In the words of the Supreme Court, a strong message must be conveyed that Courts of justice will not be allowed to be disrupted by litigants' strategy designed to profit from delays to the detriment of legitimate Flat Purchasers.

28. In that view of the matter and in addition to the above and the 5 orders passed by this Court determining the substantive rights which have become absolute and final, the Suits filed by the 5

Appellants before me are utterly frivolous and false and designed only to delay the inevitable i.e. development. Therefore in addition to rejection of 5 Appeal from Orders, all 5 suit proceedings before the Trial Court are dismissed forthwith in the facts and circumstances of the present case and observations and findings given hereinabove. If these suits are allowed to subsist, the Appellants will keep on filing proceedings and Applications to hamper the development which has seen the light of the day after more than 3 decades and only after repeated interventions of this Court. Hence this dismissal of A.O.s' and Suits is accompanied by an order of costs to the amount of Rs.1,00,000/- each to be paid to the Bombay High Court Library Room No. 39 Original Side and the Kirtikar Law Library, High Court Bombay Appellate Side equally. i.e. Rs. 50,000/- each by Appellants Afsana Enterprises (its Proprietor Mr. Jaffer Mohd. Sami Khan) and Mohd. Hanif Garib Khan. In so far as the other 3 Appellants are concerned they are directed to pay costs of Rs. 20,000/- each to the Bombay High Court Library Room No. 39 Original Side and Kirtikar Law Library, High Court Bombay Appellate Side equally i.e. Rs.10,000/- each. The costs shall be paid by all 5 Appellants as directed within a period of 2 weeks from today. If the said costs are not paid then the Collector MSD is directed to recover the same as arrears of land revenue from the Appellants and pay over the same to the beneficiaries as directed hereinabove following the due process of law.

29. Intervention Applications are allowed and disposed. Intervenor is heard.

30. All Appeal from Orders along with Interim Applications therein are dismissed.

[MILIND N. JADHAV, J.]

31. After this Judgment is pronounced, Mr. Pandey, learned Advocate for Appellants would persuade the Court to stay the present Judgment to test its validity and legality in the Supreme Court. Mr. Khandeparkar, learned Advocate for Intervenor – Developer and Mr. Jain, learned Advocate for Respondent No.4 – Flat Purchasers oppose stay of the Judgment in view of the facts and circumstances and gross delay that has occurred for development.

32. After considering Mr. Pandey's request, in view of the observations and findings given in the present Judgment and considering the facts and circumstances in the present case, I am not inclined to accede to his request. Hence request for stay of judgment is rejected.

[MILIND N. JADHAV, J.]

Ajay

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