

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST) NO. 36803 OF 2025
WITH
INTERIM APPLICATION NO. 13559 OF 2025

Kanchan Sarvan Kumar Khanna

Appellant

.. (Org. Plaintiff)

Versus

Municipal Corporation of Greater Mumbai &
Anr.

Respondents

.. (Org. Defendants)

WITH
APPEAL FROM ORDER (ST) NO. 36799 OF 2025
WITH
INTERIM APPLICATION NO. 38316 OF 2025

Rajesh Sarvan Kumar Khanna

Appellant

.. (Org. Plaintiff)

Versus

Municipal Corporation of Greater Mumbai &
Anr.

Respondents

.. (Org. Defendants)

-
- Mr. Anand Mishra a/w Mr. Abdullah Shaikh and Mr. Amit Dubey i/by Mr. Ashok M. Saraogi, Advocates for Appellants
 - Mr. Sachin Vajale i/by Ms. Komal Punjabi, Advocate for Respondents
-

CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 11, 2025

P. C.:

1. Heard Mr. Mishra, learned Advocate for Appellants and Mr. Vajale, learned Advocate for Respondents.
2. Appeal from Order (St) No. 36803 of 2025 pertains to Shop Nos. 2 and 3 and Appeal from Order (St) No. 36799 of 2025 pertains

to Shop No. 1. Appellants are running an authorized Cafe called 'Queens Inn Cafe' in the said shops. Facts and circumstances are absolutely identical. Similar Notice is issued and Order is passed by designated Officer. Since facts and events are the same both Appeals are disposed by this common order. For the sake of convenience, Appellants shall be referred as "*Plaintiffs*" and Respondents shall be referred as "*Defendants*".

3. For the sake of convenience papers / page numbers in Appeal from Order (St) No. 36803 of 2025 are referred.

4. Impugned action of the Corporation is objected to by the Plaintiff. Impugned notice dated 13.04.2023 (appended at page Nos. 82-83 of AOST 36803/2025) was issued under Section 53(1) r/w Section 52(1)(b) and (d) of the Maharashtra Regional and Town Planning Act, 1966 (for short "***MRTP Act***"), *inter alia*, calling upon the Plaintiffs to reinstate and restore the unauthorized changes in the suit premises in respect of Shop Nos. 1, 2 and 3 situated at Queens Park Premises CHS Ltd, Plot No. 71/1, Juhu Road, Santacruz (W), Mumbai - 400 009 or in the alternative apply under Section 44 of the MRTP Act for retention of work before the Competent Authority i.e. Executive Engineer (Building Proposal) Department of MCGM within one month from receipt the said statutory notice.

5. Mr. Mishra would argue that after the Plaintiffs received the statutory notice, they were ill-advised. He would fairly inform the Court that Application under Section 44 of the MRTP Act was not filed by Appellants before the Competent Authority. He would reiterate the same situational requisition today after two years. He would submit that in the meanwhile Plaintiffs were advised to file a suit plaint before the Trial Court to challenge the impugned notice as also subsequent speaking order dated 05.07.2023.

6. *Prima facie* it is seen that the impugned notice was issued on 13.04.2023 and was received by Plaintiffs on 18.04.2023. They have filed reply to the said notice dated 29.05.2023 which has been considered by the designated Officer before passing of the speaking order dated 05.07.2023. It is stated in the said order that reply received by Corporation along with certain documents have been considered and remarks are given, *inter alia*, thereafter concluding that the construction carried out by Plaintiffs was unauthorized and liable for demolition. Said order was served on the staff of Plaintiffs who has acknowledged receipt of the speaking order on 06.07.2023. Plaintiffs being aggrieved filed their respective Suits on 10.07.2023 immediately thereafter in the Trial Court.

7. There are two things which are borne out from the aforesaid facts. Firstly when the speaking order was passed, Plaintiffs were not

heard by the Corporation. Why I say so is because the documentary evidence which is appended to the AOs before me *prima facie* show the status of the suit premises of the Plaintiffs is completely authorized. Suit premises are in fact situated in a Co-operative Housing Society on the ground floor of the Society and are nomenclatured as Shop Nos. 1, 2 and 3. The documents which are considered by the designated Officer *prima facie* date back to the year 2005 onwards when the Corporation itself has repeatedly year on year renewed the shop licenses, health licenses, registration certificate, fire compliances etc and most importantly Plaintiffs have also been granted FL-II license for sale of imported liquor at the premises since 1999. Substantial material is placed before the Court appended to the AOs through which Mr. Mishra has drawn my attention which *prima facie* show that assessment of the suit premises is since its inception and construction by virtue of the sanctioned plan of 1976. All this has in fact been considered in the impugned order passed by the designated Officer which is challenged in the Suits, but without hearing the Plaintiffs.

8. In the above background, aberration committed by Plaintiffs is that they had removed the intervening wall between shop Nos. 2 and 3 which according to Corporation contravened the sanctioned plan of 1976. That apart second aberration stated in the impugned notice is

that Plaintiffs have constructed unauthorized mezzanine floor to which the answer of Plaintiffs is that it was in existence since inception. The question of construing the mezzanine floor would not arise as stated in the impugned notice since there is no ground for the Plaintiffs to increase the height of the structure since it is situated on the ground floor of the Society. No objection from Co-operative Society has been accepted by the Corporation all through out since last more than two and half decades before granting various licenses at all stages. Assessment record of structure has been made since 1976 since the day of its construction. In the impugned notice however it is stated that the Plaintiffs' structure is unauthorized and its existence is required to be proved on the datum line when in fact there is a sanctioned plan which is accepted by the Corporation itself of the structure's existence.

9. Mr. Mishra would submit that in view of the express alternate condition given in the impugned notice dated 13.04.2023 (appended at page Nos. 82-83 of the AO) permitting the Plaintiffs to apply under Section 44 of the MRTP Act for retention of work before the Competent Authority and the Plaintiffs not having done that, should not jeopardize the rights of Plaintiffs at this stage. He would submit that though the Plaintiffs have invoked the action by filing the Suit that right of Plaintiffs is still open to the Plaintiffs since drastic action

is proposed in the impugned speaking order dated 05.07.2023 (without the Plaintiffs having been heard) of penal implication under Section 53(7) of the MRTP Act which is on the face of record high handed and not justified in the facts and circumstances of the present case. He would therefore appeal to the Court to permit the Plaintiffs to file the Application under Section 44 and prescribe the time frame to enable the Competent Authority to decide the same in accordance with law in the interest of justice.

10. Service of the present AO has been effected on Respondents - Defendants. Mr. Vajale enters appearance for Corporation. He admits that service has been done. I have heard the learned Advocate for the Corporation. He submits that before passing the speaking order Appellants have not been heard.

11. In view of the aforesaid facts and circumstances and plethora of evidence rather documentary evidence which has been considered by the Corporation while passing the speaking order but without hearing the Plaintiffs no purpose whatsoever will be served by keeping the present AOs pending in this Court, rather interest of justice will be subserved if the Plaintiffs are directed to make an Application under Section 44 of the MRTP Act for retention of the work as stated in the impugned notice before the Competent Authority. Competent Authority in this case is the Executive Engineer (Building Proposal)

Department of MCGM. In view of the exigency mentioned by Mr. Mishra and the fact that Plaintiffs had also acted promptly in filing the Suit within four days after receiving the speaking order, Plaintiffs deserve to be granted a fair opportunity of making the Application under Section 44 of the MRTP Act as stated in the impugned notice itself.

12. Both speaking orders have been passed in complete violation of the principles of natural justice admittedly as the Plaintiffs have not been heard before passing such drastic orders. In view of the aforesaid findings and observations, the speaking orders dated 05.07.2023 in both matters are quashed and set aside.

13. Mr. Mishra has taken instructions from the Plaintiffs who are present in Court. They agree to file the Application for retention / regularization under Section 44 of the MRTP Act. They are directed to file their Application under Section 44 of the MRTP Act as stated in the impugned notice dated 13.04.2023 before the Competent Authority i.e. Executive Engineer (Building Proposal) Department of MCGM within a period of four weeks from today. The delay in filing the said Application stands condoned by this Court in view of above facts and findings. Application seeking regularization and retention of the work done under Section 44 of the MRTP Act shall be accepted by the Corporation if the same is so filed in compliance of this order. All

contentions of Plaintiffs are expressly kept open. After receipt of the said Application, Corporation is directed to give a hearing to the Plaintiffs / their representative / Advocate / pleader and only after hearing them pass a reasoned speaking order afresh thereon. Plaintiffs shall be entitled to refer to and rely upon all documentary evidence which are appended to the present AOs as also other documents which will enure to their benefit in accordance with law.

14. Corporation shall not be influenced by any of the observations made in this order while deciding the Application under Section 44 of the MRTP Act filed by Plaintiffs.

15. In the meanwhile, it is directed that Corporation shall not take any coercive steps whatsoever against the Plaintiffs' structure i.e. Shop Nos. 1, 2 and 3 in furtherance of the impugned Notices until the Application for regularization and retention under Section 44 of the MRTP Act is decided by the Corporation as directed herein above. It is further directed that if the order passed in the said Applications is adverse to the Plaintiffs, the same shall not be acted upon for a period of four weeks thereafter to enable both the Plaintiffs to take appropriate recourse to law as available to them.

16. With the above directions, both the Appeals from Order are disposed. Interim Applications are also disposed.

[MILIND N. JADHAV, J.]