IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.221 OF 2021
WITH
INTERIM APPLICATION NO.2911 OF 2021
AND
INTERIM APPLICATION NO.2085 OF 2021

1. Srichand Kanojia,
2. Ramharak Prasad Kanojia,
R/o.Mumbai. Appellants

versus

1. Municipal Corporation of Greater Mumbai
through Municipal Commissioner.
2. The Designated Officr, H/East Ward, MCGM. Respondents

Mr.Rajkumar Awasthi i/by Shukla & Associates for Appellants.

Mr.Jatin Sheth with Mr.Ankur Shah and Ms.Rhea Anthony for Intervenors.

Mr.Dharmesh Vyas with Ms.Smita Tondwalkar i/by Ms.Komal Punjabi for Respondent-MCGM.

CORAM : AARTI SATHE, J.

DATE : 6th October 2026

P.C.

1. This Appeal from Order has been filed challenging the order dated 21st August 2021 passed by City Civil Court, Mumbai (`Trial Court') in draft Notice of Motion in L.C.Suit (St.) No.5406 of 2021wbereby the Trial Court has rejected interim relief sought for by the Appellants.

2. The facts are in a very narrow compass. On 15th May 2017 the Municipal Corporation of Greater Mumbai (`MCGM') granted repair permission to the suit premises. The Appellants on 24th May 2019 completed the repairs and

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the same was inspected by MCGM. On 10th September 2020, MCGM cancelled the repair permission and thereafter the Appellants filed L.C.Suit No.1439 of 2020 before the City Civil Court, Mumbai. It is the Appellants' contention that the MCGM officer has stated that the MCGM has not cancelled the repair permission.

3. On 3rd July 2021, MCGM issued a show cause notice seeking an explanation in respect of the repairs to the suit premises and categorically requiring the Appellants to show cause as to why the Appellants had encroached upon by 1.5 meter in CTS No.4949 and repaired their tenement, when permission to repair was granted to the tenement of Appellant on CTS No.4947-A. Thereafter the Designated Officer of the MCGM passed an order holding that the Appellants' contentions are contrary to the inspection report and held that 1.5 meter part of the suit premises of CTSNo.4949 was unauthorized and abutting on the boundary demarcation. The Designated Officer therefore directed the Appellants to remove the encroachment construction. Being aggrieved by the aforesaid, the Appellants filed L.C.Suit (St) No.5406 of 2021 and also filed Notice of Motion for urgent ad-interim reliefs. The Appellants produced photocopy of CTS map and submitted that as the permission for repair was granted, the impugned notice 3rd July 2021 and order dated 17th August 2021 passed by MCGM was illegal. By the impugned order dated 21st August 2021, the Trial Court rejected interim relief and aggrieved by the said order the Appellants have filed the present Appeal from Order.

4. It is the contention of learned counsel for the Appellants that insofar as alleged encroachment is concerned, the same is in respect of road which was to be completed by MCGM. He has submitted that as of today the said road has been

completed by MCGM. Learned counsel for Appellants further has brought to the notice of this Court an order passed by the Supreme Court in another proceeding of another co-operative housing society in Contempt Petition (Civil) No.803 of 2023 in Civil Appeal No.1658 of 2020 wherein the MCGM had filed an affidavit submitting that the road work has been completed. He, therefore, submitted that considering the aforesaid position, there was no necessity for the MCGM to take any steps and in view thereof, the impugned order passed by MCGM ought to be set aside.

5. Learned counsel for MCGM has sought to place reliance on the affidavit filed by one Kishore Honaji Yerme, the Designated Officer of MCGM, H/East Ward dated 27th October 2021 wherein in paragraph no.11 it has been categorically submitted that the MCGM is not contemplating to take any further steps in pursuance to the letter dated 3rd July 2021 and 17th August 2021 without following due process of law i.e. without issuing show cause notice under the provisions laid down in Mumbai Municipal Corporation Act, 1988. Paragraph 11 of the said affidavit is reproduced below :

> "11. I further say and submit that present Appeal from Order is premature and has no cause of action accrued to the appellant for filing present Appeal from Order. I say and submit that Respondent MCGM is not contemplating to take any further steps in pursuance to letter dated 3rd July, 2021 and 17th August 2021 without following the due process of law i.e. without issuing show cause notice under the provisions laid down in Mumbai Municipal Corporation Act, 1888."

6. Considering that the present Appeal from Order challenges the impugned order dated 21st August 2021 which has been passed in pursuance of the letters dated 3rd July 2021 and 17th August 2021 and considering the aforesaid categorical submission made by the Designated Officer of MCGM, this Court is of

the view that no further adjudication is required in respect of the present Appeal from Order.

7. It is also made clear that this Court has not delved into the merits of the matter or expressed any prima facie view in respect of the subject matter of dispute in the present Appeal from Order. It is open for the MCGM in view of the aforesaid submission made in the affidavit of the Designated Officer, to issue fresh show cause notice in respect of the alleged encroachment made by the Appellants on CTS No.4949.

8. In view of the aforesaid, the Appeal from Order is disposed of in the aforesaid terms. No costs. Interim Applications also do not survive and stand disposed of.

9. The Trial Court is directed to decide the L.C.Suit filed by the Appellants as expeditiously as possible and preferably within a period of four months from today. All contentions of the parties in respect thereto are expressly kept open. No adjournments shall be sought by the parties at the hearing of the suit.

10. Needless to observe that this Court has not dealt with any issue raised in the Appeal from Order nor has formed any opinion.

(AARTI SATHE, J.)