

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 999 OF 2020

Abdulla Nurulla Merchant ... Petitioner

Versus

The MCGM and Ors. ... Respondents

Mr.Mohit Jadhav for the Petitioner.

Mr.A.K.Khare a/w. Ms.Vandana Mahadik, Ms. Pooja Yadav i/b. Ms. Aruna Savla for MCGM.

Col. Abhijit Kadam (Retired) a/w. Mr. Archit Manarkar i/b. R.S. Law for Respondent No. 4.

Mr.Satish Pawar, Assistant Engineer (BF), G/South Ward, present.

CORAM : S.J. KATHAWALLA, &
R.I. CHAGLA, JJ.

DATE : 3RD DECEMBER, 2020

P.C. :

1. On 1st December, 2020, this Court passed the following Order :

“1. On 25th June, 2018, the Municipal Corporation of Greater Mumbai (MCGM) had issued notice to Respondent No.4 under Section 351 of the Mumbai Municipal Corporation Act, 1888. Thereafter, an order of demolition of the unauthorized structure was passed by MCGM on 5th February, 2019. MCGM has in the last almost two years not bothered to demolish the unauthorized structure, thereby compelling the Petitioner to file the above Writ Petition seeking directions against the MCGM to

act on its order of demolition. It is also the case of the Petitioner that the order of demolition does not pertain to the entire unauthorized structure.

2. It is therefore, clear beyond any doubt that the officials of MCGM for reasons best known to them are extremely selective about executing their own orders of demolition i.e. in some cases the officials of MCGM are ready to demolish the notice structure/s even before service of its demolition order on the noticee and in some matters, like in the present case, the demolition is not carried out even after more than 20 months from the date of the order of demolition.

3. In view thereof, the Deputy Municipal Commissioner of the concerned Ward shall file his Affidavit on 3rd December, 2020 explaining the above conduct of the MCGM in the present case.

4. A copy of this order shall be forwarded to the Municipal Commissioner of the MCGM by the Head of the Legal Department of MCGM.

5. Stand over to 3rd December, 2020.

6. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.”

2. Today, Mr.Vijay Madhukar Balamwar, Deputy Municipal Commissioner (Zone-II) of the MCGM has filed his Affidavit, wherein he has admitted that an Order dated 5th February, 2019 was passed by the MCGM directing the Respondent No. 4 to remove the notice structure which is beyond 14 ft. within seven days from the receipt

of the Speaking Order of demolition dated 5th February, 2019. He has thereafter proceeded to state in his Affidavit that a requisition was sent to the concerned police officer on 16th August, 2019 and the demolition was fixed for 26th August, 2019. The Deputy Municipal Commissioner has failed to explain as to why MCGM had waited upto August 2019, and not taken any steps to carry out demolition of the notice structure after the notice period of seven days had admittedly lapsed in the second week of February 2019.

3. Despite the delay of almost six months, the demolition of the notice structure was not carried out on the date fixed i.e. 26th/28th August, 2019. The Deputy Municipal Commissioner has stated in his Affidavit that the “..... *demolition could not be carried due to resistance and Law and Order situation*”. When this Court asked the learned Advocate appearing for MCGM to explain as to what was the law and order situation, he took instructions from the officer present in Court and stated that the law and order situation had arisen as there was a bedridden widow alongwith her young daughter who were occupying the notice structure. However, the Advocate for Respondent No. 4 informs the Court that the notice structure is occupied by his client who is a senior citizen and there was no law and order situation that had arisen. This is therefore the first incorrect statement made on oath by the Deputy Municipal Commissioner.

4. In his Affidavit, the Deputy Municipal Commissioner has further stated that the demolition of the notice structure was rescheduled alongwith two other

structures of some other noticees sometime between 9th December, 2019 and 11th December, 2019 as per the availability of the police officials. The demolition process of the notice structure started on 10th December, 2019 and the roof of the notice structure was demolished/removed. However, further demolition as per Speaking Order could not be carried out because of the law and order situation. Here the Deputy Municipal Commissioner has annexed photocopies of certain photographs of the partial demolition. From the said photographs, it is evident that the situation appears to be peaceful and there is no apparent law and order situation as alleged by the Deputy Municipal Commissioner in his Affidavit. In any event there is nothing produced on record to show that the demolition of the notice structure could not be completed on 10th December, 2019 because of the alleged law and order situation. This is the second incorrect statement made on oath by the Deputy Municipal Commissioner of the MCGM.

5. The Deputy Municipal Commissioner of the MCGM has further stated in his Affidavit that the demolition of the notice structure and some other structures was once again arranged between 7th January, 2020 to 9th January, 2020. However, the demolition was not carried out qua the notice structure. The Deputy Municipal Commissioner has not explained as to why a structure which is partially demolished is not taken up for demolition immediately.

6. It is therefore clear that Mr. Vijay Madhukar Balamwar, Deputy Municipal Commissioner, Zone-II of the MCGM has made incorrect statements on

Affidavit. He is therefore directed to explain on Affidavit as to why action should not be taken against him for consciously making incorrect statements in his Affidavit dated 2nd December, 2020 filed by him, pursuant to the directions of this Court. He shall also remain present before this Court on 8th December, 2020 at 11.00 a.m. alongwith his Affidavit setting out his explanation.

7. The learned Advocate appearing for the Petitioner states that liberty be granted to the Petitioner to appear before the City Civil Court, Mumbai in the Suit filed by Respondent No.4 being SC No. 1101 of 2020. The City Civil Court shall hear the Petitioner before passing orders in the Notice of Motion taken out by Respondent No. 4 herein. The learned Advocate appearing for Respondent No. 4 has agreed to provide a copy of the proceedings filed by him before the City Civil Court to the Advocate for the Petitioner to enable him to make his submissions before the City Civil Court, Mumbai.

8. Stand over to 8th December, 2020.

9. This order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(R.I. CHAGLA, J.)

(S.J. KATHAWALLA, J.)