

Dixit

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO.595 OF 2018**  
**ALONG WITH**  
**CIVIL APPLICATION NO.787 OF 2018**

1. The Municipal Corporation of ]  
Greater Mumbai, ]  
Having its Head Office at Mahapalika Marg, ]  
Mumbai - 400 001. ]
2. Deputy Municipal Commissioner (Z-VI), ]  
“S” Ward, Mumbai Municipal Corporation, ]  
“S” Ward Building, Near Mangatram Petrol ]  
Pump, L.B.S. Marg, Bhandup (West), ]  
Mumbai - 400 078. ] .... Appellants-Applicants

***Versus***

- Bhandup Amber Co-operative Housing ]  
Society Ltd., Mumbai. ] .... Respondent

Mr. J. Reis, Senior Counsel, for the Appellants-Applicants/Municipal Corporation.

Mr. Vishwajeet Kapse, a/w. Mr. Ajinkya Badar, I/by Mr. Harish R. Pawar, for the Respondent.

**CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.**

**RESERVED ON : 18<sup>TH</sup> SEPTEMBER 2018.**

**PRONOUNCED ON : 28<sup>TH</sup> SEPTEMBER 2018.**

**JUDGMENT :**

1. Heard Mr. Reis, learned Senior Counsel, for the Appellants-Applicants/Municipal Corporation, and Mr. Kapse, learned counsel for the Respondent-Society.

2. This Appeal takes an exception to the order dated 19<sup>th</sup> March 2018, passed by the City Civil Court, Mumbai, thereby allowing the Notice of Motion No.4510 of 2017 filed in L.C. Suit No.2663 of 2017.

3. The said Notice of Motion was taken out by the Respondent-Society, restraining the Appellant-Municipal Corporation from taking any action in pursuance of the impugned notice dated 27<sup>th</sup> November 2017 issued by the Appellant-Municipal Corporation under Section 299 of the Mumbai Municipal Corporation Act, 1888.

4. Brief facts of the Appeal can be stated as follows :-

Respondent herein is a Co-operative Housing Society, registered under the provisions of the Maharashtra Co-operative Societies Act, 1960. The building of the Respondent-Society has been constructed in accordance with the 'Sanctioned Plan'. It consists of the boundary wall thereunder. The said building is comprising of 6 floors and 42 flats, occupied by various members. The boundary wall of the Respondent-Society was constructed in the year 1981. As per the 'Sanctioned Plan', the main gate of the Respondent-Society is existing towards M.V.R. Shinde Marg and it is surrounded by one Koteshwar Co-operative Housing Society, situated at West and North side of the IBUBS Hindi School and M/s. Jayashri Engineering Company Private Limited at the East side.

5. It is the contention of the Respondent-Society that, without following due process of law, on 9<sup>th</sup> November 2016, the officers of the Appellant-Municipal Corporation tried to take survey of the campus of the Respondent-Society, including the boundary wall, and further made encroachment on the property of the Society with an intention to demolish the boundary wall and cabin of the Security Guard for the purpose of the road widening. The members of the Respondent-Society tried to restrain them; however, there is reasonable apprehension that, Appellant-Municipal Corporation may take similar action.

6. Hence, Respondent-Society has initially filed L.C. Suit No.2595 of 2016 for injunction against the Appellant-Municipal Corporation. The said Suit, along with the Notice of Motion, came to be disposed off on 18<sup>th</sup> November 2016, with a direction to the Appellant-Municipal Corporation to follow due process of law before taking any action.

7. Thereafter, the Appellant-Municipal Corporation had issued notice dated 27<sup>th</sup> November 2017, under Section 299 of the MMC Act, informing the Respondent-Society that, after the expiry of the seven days from the receipt of the notice, the Municipal Corporation would take possession of certain land, (not occupied by a building), forming part of the Society's premises bearing C.T.S. No.622, which falls within the 'Regular Line of Public Street'. It was further informed that, the possession of the said land would be taken together with its enclosing walls, hedge or fence, if

any, and any platform, verandah, step etc. or other structure, external to the building, or any portion of the said building, platform, verandah, step etc. or other such structure, which may be found standing upon the said land and, if necessary, the Municipal Corporation shall proceed to clear the same. It was also informed that, the 'Plan' of the land, the possession of which was to be taken over, can be inspected by the members of the Respondent-Society during office hours in the Office of the Assistant Commissioner, "S" Ward. As a matter of fact, the copy of the 'Plan', along with the impugned notice, was also forwarded to the Respondent-Society.

8. The grievance of the Respondent-Society is that, the impugned notice issued under Section 299 of the MMC Act is not at all legal and proper. It is contended that, when the Appellant has undertaken to follow due process of law, it contemplated that, the Appellant should take necessary action under Section 296 and not under Section 299 of the MMC Act. Moreover, the said notice is also vague, as it does not pin-point the exact area / measurement of the land, of which possession is to be taken. It merely mentions so called 'certain land' and if the said land is taken into possession by the Appellant-Municipal Corporation, then, it will directly affect the main entrance of the Respondent-Society. The Society thereafter will not have any safety of their privacy and lives. It was submitted that, Sections 297 and 299 of the MMC Act are applicable

for the widening of the existing road and not at all for creating a new road. By taking over possession of the land belonging to the Respondent-Society, as the Appellant-Municipal Corporation is creating a new road, on this point also, the impugned notice is not legal and valid and, therefore, it was requested that, the Appellant-Municipal Corporation should be restrained from taking any action in pursuance of the said notice.

9. This Notice of Motion came to be resisted by the Appellant, contending *inter alia* that, the notice issued to the Respondent is perfectly legal and proper and it was issued after following the due process of law. It was denied that the said notice is vague. According to the Appellant, the Office of the Deputy Chief Engineer (Traffic) had obtained administrative approval from the 'Competent Authority' for the proposal of prescribing the 13.40 meters 'Wide Road Line' to the existing M.V.R. Shinde Marg, from L.B.S. Marg to Bhandup Railway Station, through M/s. Jayashri Engineering Company Private Limited, under Section 297(1)(b) of the MMC Act. The 'Public Notice' to that effect has also been displayed at the site and in the Office of the Assistant Commissioner, "S" Ward, on 24<sup>th</sup> September 2015. It was also published in the local newspaper. Thereafter, the suggestions / objections were called for. The suggestion received from the Respondent-Society was considered in the meeting arranged for the said purpose on 27<sup>th</sup> January

2016. After considering their objection, the proposal was submitted to the 'Works Committee' and the 'Works Committee' of the Appellant-Municipal Corporation, vide its Resolution dated 27<sup>th</sup> April 2016, and the Appellant-Municipal Corporation has, vide its Resolution dated 12<sup>th</sup> July 2016, authorized the 'Municipal Commissioner' to prescribe the 13.40 meters 'Wide Road Line' to the existing M.V.R. Shinde Marg. On receipt of the Resolution passed by the Appellant-Municipal Corporation, a copy of the duly 'Approved Plan' of the 'Sanctioned Road Line' was forwarded to the Assistant Commissioner, "S" Ward, for further course of action, as per the relevant provisions of the MMC Act. Thus, it was submitted that, whatever action was contemplated in pursuance of the said notice, issued under Section 299 of the MMC Act, was after following the due process of law and the same being just and legal, no relief of interim injunction should be granted; otherwise, the public cause of widening of the road will suffer.

10. The Trial Court has, however, after considering the submissions advanced by learned counsel for both the parties, found that the impugned notice is vague, as it does not specifically disclose / mention the area, which the Appellant-Municipal Corporation intended to take possession of and hence, the Trial Court has granted the relief of interim injunction, restraining the Appellant-Municipal Corporation from taking any action in pursuance of the impugned notice.

11. While challenging this order of the Trial Court, as rightly submitted by learned Senior Counsel for the Appellant-Municipal Corporation, the only ground on which the Trial Court has made the Notice of Motion absolute is that, the impugned notice is vague and not specific. However, even a cursory perusal of the impugned notice goes to show that, it not only specifies the certain land (not occupied by the building), of which the possession was to be taken, together with the structures standing thereon, but it also states that, the 'Plan' of the land referred-to may be inspected in the Office of the Assistant Commissioner, "S" Ward, on application being made to him during office hours. As a matter of fact, as per the very case of the Respondent-Society also, the copy of the said 'Plan' was enclosed with the impugned notice. Therefore, it can hardly be accepted that the notice was vague in any way.

12. Moreover, for the sake of argument, even if it is accepted that the impugned notice was vague, learned Senior Counsel for the Appellant has pointed out that, now the Municipal Corporation has, on 6<sup>th</sup> April 2018, issued a fresh notice informing the Respondent-Society the specific area, of which possession was to be taken over. The copy of the said notice is produced on record and it contains the 'Plan', indicating the affected area, which 'Plan' was already attached to the impugned notice. The detail sketch and the area of the land affected in the 'Regular Line of Road', i.e. 13.40 meters Wide Road, is also mentioned in the

present notice. Therefore, now the alleged defect, which remained in the impugned notice, is also corrected. Therefore, the impugned order, which was passed by the Trial Court on the ground that the notice was vague, no more remains and, therefore, it follows that the Appeal should be allowed, setting aside the impugned order passed by the Trial Court.

13. According to learned counsel for the Respondent-Society, however, the impugned notice was challenged not only on the ground that, it is vague and not specific, but also on the ground that, it is not legal and proper. According to him, the notice under Section 299 of the MMC Act can be issued only in respect of the open land and not when the structure is standing on the said land. In a case where the structure is standing, the notice has to be issued under Section 297 of the MMC Act. It is his submission that, the Appellant-Municipal Corporation is seeking possession of the land below or underneath the boundary / compound wall and the cabin of the Security Guard of the Society and, therefore, in respect of such land, where the structure is standing, the notice issued under Section 299 of the MMC Act cannot be maintainable or legal.

14. In order to appreciate this submission advanced by learned counsel for the Respondent, it would be useful to refer to Section 299 of the MMC Act, which can be reproduced as follows :-

***“299. Acquisition of Open Land or of Land Occupied by Platforms, etc., within the Regular Line of a Street :-***

- (1) *If any land not vesting in the Corporation, whether open or enclosed, lies within the regular line of a public street, and is not occupied by a building, or if a platform, verandah, step or some other structure external to a building abutting on a public street, or a portion of a platform, verandah, step or other such structure, is within the regular line of such street,*

*the Commissioner may, after giving to the owner of the land or building not less than seven clear days written notice of his intention so to do, take possession on behalf of the Corporation of the said land with its enclosing wall, hedge or fence, if any, or of the said platform, verandah, step or other such structure, as aforesaid, or of the portion of the said platform, verandah, step or other such structure aforesaid, which is within the regular line of the street, and, if necessary, clear the same and the land so acquired shall thenceforward be deemed a part of the public street.*

*[Explanation : For the purposes of acquisition of open land lying within the regular line of a public street, and not occupied by a building constructed before the 25<sup>th</sup> March 1991 and occupied without obtaining the permission to occupy the building from the Commissioner under Section 353A, 'owner' of the said land or building means a co-operative housing societies registered under the Maharashtra Co-operative Societies Act, 1960 or any condominium*

*or a company incorporated under the Companies Act, 1956, with limited liability or an association of persons or any ad hoc body formed by the occupants of the building.*

*(2) Provided that, when the land or building is vested in the Government possession shall not be taken as aforesaid without the previous sanction of the Government concerned and, when the land or building is vested in any Corporation constituted by Royal Charter or by an Act of Parliament of the United Kingdom or by an Indian Law, possession shall not be taken as aforesaid, without the previous sanction of the State Government.”*

15. This Section, thus, makes it very clear that, the notice under Section 299 of the MMC Act can be issued, not only in respect of the open land, but also when such land is enclosed and which lies within the 'Regular Line of Public Street' and it is not occupied by a building or if a platform, verandah, step or some other structure external to the building abutting on a public street or a portion of a platform, verandah, step or other such structure is within the regular line of such street, then also, the Commissioner, after giving to the owner of the land or building, not less than 7 days clear written notice, of his intention so to do, take possession on behalf of the Municipal Corporation of the said land with its enclosing wall, hedge or fence, if any, or of the said platform, verandah, step or other such structure. The reading of this

Section, therefore, makes it clear that, except for the main structure, other structures, which are not part of the main building, which even if standing on the land, for taking possession of such land, the notice under Section 299 of the MMC Act is valid.

16. This aspect was considered by the Hon'ble Apex Court in the case of *Indian City Properties Limited Vs. Municipal Commissioner of Greater Bombay*, (2005) 6 SCC 417, and it was held, in paragraph Nos.17 and 18 thereof, that,

*“The word used in Sections 297 to 311 of the MMC Act is “Building”, in contradistinction with Section 299, which speaks of structures and buildings.”*

17. It was held that,

*“The word “structure” is used as a generic term, so that while all buildings may be structures, all structures are not buildings. The structure, which is not a building and is a platform, verandah, step or some other such structure external to a building, may be taken over by the Commissioner under Section 299(1) of the MMC Act, if it is within the 'Regular Line of the Street'.”*

18. It was further held that,

*“The words “some other such” must be construed as 'structures similar or like platform, verandah and step'. The words must be read ejusdem generis with the preceding words. The underlying*

*characteristic of platforms, verandahs and steps is that, they are not independent structures and are external to a building, to which they are attached from outside and form an inessential part of the building. Therefore, in order to be a building for the purpose of Section 299, the structure would have to be an independent, permanent structure.”*

19. It was further held that,

*“Section 299 of the MMC Act was enacted to confer power on the Commissioner to take possession in respect of certain structures in a summary way and, therefore, it was unlikely that the Legislature intended that the Commissioner would exercise such summary powers in respect of independent structures, which have been defined as 'Building' under the MMC Act.”*

20. This Judgment of the Hon'ble Apex Court, thus, coupled with the definition of Section 299 of the MMC Act, makes it clear that, under this summary power conferred by Section 299 of the MMC Act, the Commissioner can take possession of the land, with its enclosing wall, hedge or fence and including the structures like platform, verandah, step etc. standing thereon. Here in the case, even assuming that this notice under Section 299 of the MMC Act is issued to take possession of the land underneath the boundary wall or the cabin of the Security Guard, both of these structures are not independent structures and are external to the building, to which they are not attached from outside and form an inessential part of the building. Section 299 of the MMC Act

specifically confers powers and jurisdiction on the Commissioner to take possession thereof in a summary manner, as contemplated in the said Section. Therefore, the contention raised by learned counsel for the Respondent that, the notice issued under Section 299 of the MMC Act is not legal and correct, can hardly be accepted.

21. As regards the Judgment of this Court relied upon by learned counsel for the Respondent, that of the *Municipal Corporation of Greater Bombay Vs. Durgadas Shankarrao Rege and Anr.*, 1979 Bom.C.R. 432, it was in respect of challenging the Constitutional validity of the provisions under Sections 298 to 301 of the MMC Act, wherein, in paragraph No.11 of the said Judgment, it was held that,

*“An analysis of these Sections show that, Sections 297 to 301 of the MMC Act constitute a complete scheme for a particular purpose. The acquisition under Sections 298 and 299 can only be in respect of land falling within the 'Regular Line of the Street'. Further, it can only be in respect of land, which is not occupied by a building or which is occupied only by a compound wall or a platform, verandah, step or some other structure, which is external to the building. Any other type of land or any building can only be acquired under Section 296 of the MMC Act. Thus, the acquisition under Sections 298 and 299 of the MMC Act is in respect of a particular kind of property only.”*

*[Emphasis Supplied]*

22. In my considered opinion, this Judgment is not of any help to the

Respondent-Society, as this Judgment also recognizes the power of the Municipal Corporation to take possession of the land falling within the 'Regular Line of the Street', which is not occupied by a building, though it may be occupied by the compound wall, platform, verandah, step or some other structure, which is external to the building. Here in the case, the notice is issued in respect of the land, which, accepting the case of the Appellant, is occupied by the compound wall or the cabin of the Security Guard, which is a structure external to the building and, therefore, the notice is required to be held as legal and valid.

23. As regards the Judgment of the Hon'ble Apex Court in the case of *State of Bombay and Anr. Vs. Sardar Venkat Rao Krishna Rao Gujar, AIR 1966 SC 991*, relied upon by learned Senior Counsel for the Appellant-Municipal Corporation, it deals with the definition of the word 'Building' and in paragraph No.11 of the said Judgment, it was held that,

*“In the context of Section 4(1) of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, the word 'Building' should be given its literal meaning as 'something which is built' and, therefore, even uncovered ottas and chabutras fall within the term 'Building', as used in Section 5(a) of the said Act.”*

24. Needless to state that, the word 'Building' in the said case was interpreted in the light of the provisions of the Madhya Pradesh

Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 ; whereas, the word 'Structure', which is used in Section 299 of the MMC Act, is already interpreted by the Hon'ble Apex Court in the above-said Judgment of *Indian City Properties Limited (Supra)*, holding that the term 'Structure' includes '*any platform, verandah, step etc., which is external to the building*'. Here in the case, as the cabin of the Security Guard is a 'structure', external to the building and not occupied, and the compound wall is also something which is contemplated in Section 299 of the MMC Act itself, this Judgment will not be helpful to the learned counsel for the Respondent.

25. As a result, once it is held that the impugned notice, issued under Section 299 of the MMC Act, is legal and valid, it has to be held that, the Trial Court has committed an error in allowing the Notice of Motion, merely on the count that it was vague and not specific, which, I have already held, is more than sufficiently specific, as it also includes the 'Plan' of the land, of which the possession was sought. Hence, the impugned order passed by the Trial Court is required to be quashed and set aside.

26. Accordingly, the Appeal is allowed. The impugned order passed by the Trial Court is set aside. As a result, the Notice of Motion filed by the Respondent-Society before the Trial Court, seeking the relief of interim

injunction, restraining the Appellant-Municipal Corporation from acting in pursuance of the notice issued under Section 299 of the MMC Act, stands dismissed.

27. In view of the disposal of the Appeal, Civil Application No.787 of 2018 pending in the Appeal does not survive and the same stands disposed off as infructuous.

28. At this stage, learned counsel for Respondent-Society seeks extension of ad-interim order passed by the Trial Court, which was in existence during the pendency of this Appeal. However, considering the facts stated above and also having regard to the fact that the property is required for the public cause of 'Road Widening Project', the ad-interim order passed by the Trial Court cannot be extended. Hence, this prayer stands rejected.

**[DR. SHALINI PHANSALKAR-JOSHI, J.]**