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Demolition cases cannot be kept pending indefinitely due to Ad-interim relief, Bombay HC

Omkar Gokhale December 10 2019

94

In a significant order, the Bombay High Court recently emphasised that cases stalled due to ad-interim relief granted against the proposed demolition of illegal structures cannot be kept pending indefinitely. The Court observed,

“We have in most of the matters before us noted that, as soon as the Municipal Corporation issues a notice to any party to remove the unauthorized structure/s, he/she files an injunction suit in the City Civil Court, giving very short notice to the Corporation, moves and obtains an ad-interim injunction, not on merits but as a matter of course, since the Advocate for the Corporation, who is served with the papers at the last minute is left with no alternative but to seek time to take instructions.”

The Court went on to note,

“Consequently, as in the instant case, this Court is unable to move further in the matter, since the Corporation repeatedly submits that despite the structure being unauthorized, it is unable to take any



action because of the ad interim order passed by the City Civil Court. This modus operandi cannot continue."

A Division Bench of Justices **SJ Kathawalla** and **BP Colabawalla** was hearing a petition filed by one *Indu Sarathi Developers*, seeking writ of mandamus from the Court to the Municipal Corporation of Greater Mumbai (MCGM) to demolish an allegedly unauthorised construction on the petitioner's property.



Earlier, the Bombay High Court on June 6, 2017 had directed the MCGM officers to visit the subject property to ascertain whether illegal construction as alleged by the petitioner had been carried out. The Court had directed that if the respondent MCGM finds illegal construction, it should take steps for its demolition in accordance with law. The Court had further clarified that the action of demolition should follow due notice to the occupant, Atul Mishra of *Atul Marbles*.

Pursuant to the said order, the MCGM had confirmed that the structures put up by the respondent proprietor/occupant were illegal and issued notice in the matter. Subsequently, the occupant challenged the demolition order before the City Civil Court. The trial Court had granted ad-interim relief to the occupant and restrained the Corporation from taking action to demolish the structures in question.

The High Court observed that injunction was granted by the City Civil against Corporation without going into the merits of the case. The Court went on to note that the injunction order has continued for over two years and that even the Notice of Motion has not been taken up for hearing.

In response, the Division Bench has now directed the Principal Judge, City Civil and Sessions Court to ensure that ad-interim urgent orders passed in such a such matters do not continue for an indefinite period. In this regard, the order states,

"A copy of this order shall be forwarded to the Principal Judge, City Civil and Sessions Court to ensure that ad-interim urgent orders passed in the aforesaid routine manner without going into the merits and without the Corporation getting enough time to take instructions in the matters, do not continue

for an indefinite period but the matters pertaining to unauthorized constructions where such ex parte urgent orders are passed should be taken up for final hearing and decided on merits at the earliest."

The High Court proceeded to direct the City Civil Court Judge to hear Notice of Motion within two weeks and pass appropriate orders. The Bench also directed that a copy of its order be forwarded to the Guardian Judges of the City Civil Court, Mumbai by the Prothonotary and Senior Master of the High Court.

Respondent MCGM was represented by Special Counsel **Ashwin Sakolkar** along with advocates **Rupali Adhate** and **Yamuna Parekh**. Advocate **AR Shaikh** appeared for petitioner *Indu Sarathi Developers*.

[Read order dated December 5, 2019]

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Dik / Nitin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 100 OF 2017

Indu Sarathi Developers ...Petitioner.
vs
The Municipal Corp. of Gr. Mumbai & Ors. ...Respondents

.....
Mr. A.R.Shaikh for the Petitioner
Mr. Ashwin Sakolkar a/w Ms. Rupali Adhate & Ms. Yamuna Parekh for the
Respondent/ M.C.G.M.
Mr. Tanaji Rupnar, AE (B & F) R/S Ward from M.C.G.M. present.

.....
**CORAM : S. J. KATHAWALLA &
B. P. COLABAWALLA, JJ.
DATED 05 DECEMBER, 2019.**

P.C. :

1. The Petitioner seeks the following relief in the above Writ Petition :

“(a) *to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, directing the Respondent Nos.1 and 2 to forthwith to demolish the unauthorized*

construction of structure with brick masonry wall, with G.I. Sheet/ A.C. Sheet roof admeasuring 20'x40' with the support of M.S.Angles on my property being Survey No. 65, Hissa No.7, corresponding to C.T.S. No. 561, admeasuring 2624.60 sq.mtrs of Kandivali Village, Taluka Borivali, Mumbai Sub-urban district.”

2. On 6th June, 2017 the Division Bench of this Court (Coram : A.S.Oka and Smt. Vibha Kankanwadi, JJ.) passed the following order.

“1. *Heard the learned counsel for the petitioner and the learned counsel for the respondent Nos.1 and 2. Issue notice to the respondent No.3 returnable on 25th July, 2017.*

Pg 1 of 4

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.100 OF 2017

Indu Sarthi Developers ... Petitioner
versus
The Municipal Corporation of Greater
Mumbai and Ors. ... Respondents

Mr. A.R.Shaikh, for Petitioner.

Mr. Ashwin Sakolkar with Ms. Vandana Mahadik, Ms. Rupali Adhate, for MCGM.

**CORAM: S.J. KATHAWALLA &
B.P.COLABAWALLA, JJ.**

DATE: 20th DECEMBER, 2019

P.C.:

1. Perused the order dated 5th December, 2019. The Corporation was not taking action against the impugned structure in view of the order dated 13th July, 2017 passed by the City Civil Court, Mumbai which was an ex-parte ad-interim order. The City Civil Court had thereafter, not heard the matter on merits and the injunction continued. In view thereof, on 5th December, 2019 we passed a detailed order, paragraphs 5 and 6 of which are reproduced hereunder :

“5. We have in most of the matters before us noted that , as soon as the Municipal Corporation issues a notice to any party to remove the unauthorized structure/s, he/she files an injunction suit in the City Civil Court, giving very short notice to the Corporation, moves and obtains an ad-interim injunction, not on merits but as a matter of course, since the

Advocate for the Corporation, who is served with the papers at the last minute is left with no alternative but to seek time to take instructions. Consequently, as in the instant case, this Court is unable to move further in the matter, since the Corporation repeatedly submits that despite the structure being unauthorized, it is unable to take any action because of the ad-interim order passed by the City Civil Court. This modus operandi cannot continue. A copy of this order shall be forwarded to the Principal Judge, City Civil and Sessions Court to ensure that ad-interim urgent orders passed in the aforesaid routine manner without going into the merits and without the Corporation getting enough time to take instructions in the matters, do not continue for an indefinite period but the matters pertaining to unauthorized constructions where such ex-parte urgent orders are passed should be taken up for final hearing and decided on merits at the earliest.

6. The learned Judge of the City Civil Court, Dindoshi to whom the above Notice of Motion taken out in L.C. Suit No. 1979 of 2017 is assigned, should hear the Notice of Motion within a period of two weeks from today and pass appropriate orders. Both the parties shall appear before the Principal Judge, City Civil Court, Dindoshi on 9th December, 2019 at 11.00 a.m., produce this order and seek necessary directions.”

2. Pursuant thereto, the City Civil Court had decided the Notice of Motion and has forwarded its order dated 13th December, 2019 to this Court. From the said order, it appears that the judgment was uploaded on 17th December, 2019. Time was granted to the Original Plaintiff to file an Appeal from Order upto 19th December,

2019. If there is no stay on the order granted by the High Court, the Corporation shall forthwith proceed to remove the offending structure.

3. The Writ Petition is accordingly disposed of.

4. All concerned to act on an ordinary copy of this order duly authenticated by the Private Secretary of this Court.

(B.P.COLABAWALLA, J.)

(S.J.KATHAWALLA, J.)

Dik / Nitin

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
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WRIT PETITION NO. 100 OF 2017

Indu Sarathi Developers ...Petitioner.
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Respondent/ M.C.G.M.
Mr. Tanaji Rupnar, AE (B & F) R/S Ward from M.C.G.M. present.

.....

**CORAM : S. J. KATHAWALLA &
B. P. COLABAWALLA, JJ.
DATED 05 DECEMBER, 2019.**

P.C. :

1. The Petitioner seeks the following relief in the above Writ Petition :

“(a) *to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, directing the Respondent Nos.1 and 2 to forthwith to demolish the unauthorized construction of structure with brick masonry wall, with G.I. Sheet/ A.C. Sheet roof admeasuring 20’x40’ with the support of M.S.Angles on my property being Survey No. 65, Hissa No.7, corresponding to C.T.S. No. 561, admeasuring 2624.60 sq.mtrs of Kandivali Village, Taluka Borivali, Mumbai Sub-urban district.”*

2. On 6th June, 2017 the Division Bench of this Court (Coram : A.S.Oka and Smt. Vibha Kankanwadi, JJ.) passed the following order.

“1. *Heard the learned counsel for the petitioner and the learned counsel for the respondent Nos.1 and 2. Issue notice to the respondent No.3 returnable on 25th July, 2017.*

2. *We direct the respondent No.2 to immediately visit the subject property for ascertaining whether illegal construction as alleged by the petitioner has been carried out. If the respondent No.2 finds that illegal construction has been carried out, he shall forthwith take steps for demolition of the illegal construction in accordance with law.*
3. *We make it clear that action of demolition shall not be taken without notice to the respondent No.3.”*

3 Pursuant to the above order, the Municipal Corporation after confirming that the structures put up by Respondent No.3 were illegal, issued notice to Respondent No.3. Respondent No.3 immediately moved the City Civil Court, Dindoshi and obtained an ad-interim order dated 13th July, 2017 restraining the Corporation from taking action on the notice, which Order is reproduced hereunder :

“Advocate N.B.Shukla for plaintiff present. Advocate Botlawar for defendant / MMC present. Mrs.Komal Bhoi, Junior Engineer attached to R/South Ward present. FRSR the following order is passed :

ORDER

The structure bearing census No. RXC 37-1/1 to the extent of 55 x 65 ft. approximately and mezzanine floor admeasuring 55 x 65 ft. by excluding the developed area which is covered under road is protected i.e. defendant is directed not to demolish the same till next date. Adjourned for N/M reply to 31/8/2017.”

4. It is clear from the above Order that the City Civil Court has granted

injunction against the Corporation without going into the merits of the case. Since more than two years, the injunction order, which is not passed on merits, has continued against the Corporation and the Notice of Motion has not been taken up for hearing.

5. We have in most of the matters before us noted that , as soon as the Municipal Corporation issues a notice to any party to remove the unauthorized structure/s, he/she files an injunction suit in the City Civil Court, giving very short notice to the Corporation, moves and obtains an ad-interim injunction, not on merits but as a matter of course, since the Advocate for the Corporation, who is served with the papers at the last minute is left with no alternative but to seek time to take instructions. Consequently, as in the instant case, this Court is unable to move further in the matter, since the Corporation repeatedly submits that despite the structure being unauthorized, it is unable to take any action because of the ad-interim order passed by the City Civil Court. This *modus operandi* cannot continue. A copy of this order shall be forwarded to the Principal Judge, City Civil and Sessions Court to ensure that ad-interim urgent orders passed in the aforesaid routine manner without going into the merits and without the Corporation getting enough time to take instructions in the matters, do not continue for an indefinite period but the matters pertaining to unauthorized constructions where such ex parte urgent orders are passed should be taken up for final hearing and decided on merits at the earliest.

6. The learned Judge of the City Civil Court, Dindoshi to whom the above Notice of Motion taken out in L.C. Suit No. 1979 of 2017 is assigned, should hear the Notice of Motion within a period of two weeks from today and pass appropriate orders. Both the parties shall appear before the Principal Judge, City Civil Court, Dindoshi on 9th December, 2019 at 11.00 a.m., produce this order and seek necessary directions.

7. All parties to act on an ordinary copy of this order duly authenticated by the Associate of this Court.

8. Stand over to 19th December, 2019 “**High on Board**”.

9. A copy of this Order shall be forwarded to the Guardian Judges of the City Civil Court, Mumbai by the Prothonotary and Senior Master of this Court.

(B. P. COLABAWALLA, J.)

(S. J. KATHAWALLA, J.)