

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO. 1828 OF 2019**

Mrs.Paramjit Kaur Bansal ... Petitioner

Versus

The Municipal Corporation of Greater Mumbai & Ors. ... Respondents

Mr.Prashant Pandey a/w. Ms. Vijaya Shetty, Mr. Jain, Mr. Irfan Unwala for the Petitioner.

Mr.Anoop Patil a/w. Ms.Yamuna Parekh, Ms. Rupali Adhate for Respondent No. 1 Corporation.

Mr.Ram Singh for Respondent No. 6.

Mr.Hemant Haryan, AGP for Respondent No. 10.

Mr.Rajesh Khobragade for the Plaintiff in Suit No. 160 of 2019 of City Civil Court.

Mr.Chirag Shah a/w. Mr. Rakshit Jain i/b. J.J. Shah for the Plaintiff in Suit No. 875 of 2019 of City Civil Court.

Mr.Jatin Babu Nair – Respondent No. 6 Developer, present in person.

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

DATE : 7TH JANUARY, 2020

P.C. :

1. By the above Writ Petition, the Petitioner has prayed that records from the Municipal Corporation of Greater Mumbai (MCGM) including the plans approved and sanctioned by the Executive Engineer, Building and Proposal, W.S. K/ West Ward, MCGM in respect of the building consisting of ground plus four floors at House No. T-117, situated and lying at, Plot of Land bearing Plot No. 2, C.T.S. No.

1075/2 of Village Juhu, Taluka Andheri situated at Juhu Koliwada, Catholic Society Road, Santacruz (West), Mumbai – 400 049 (**the subject building**) be called for and the MCGM be directed to initiate action in respect of the subject building, which is completely unauthorized.

2. Respondent No. 6 Developer, who is present in Court, admits that he has constructed the subject building without obtaining any permission from the MCGM.

3. The learned Advocate appearing for the MCGM on instructions states that the entire subject building is unauthorized and the same is constructed without obtaining any permission from the MCGM. However, the MCGM has as usual expressed its helplessness to proceed with the demolition since the occupants of the subject building have filed three Suits before the City Civil Court at Dindoshi and the City Civil Court at Dindoshi has passed orders therein, as under :

i. In Suit No. 160 of 2019, Ad-hoc Judge Shri K.V. More by his Order dated 22nd January, 2019, passed an Order stating that no coercive action shall be taken by the MCGM without following due process of law. Judge Shri K.V. More, before passing the order has not bothered to examine at least prima facie merits of the case and find out whether any sanction was obtained from the MCGM before construction of the Suit building or what is the due process required to be followed in such case before demolition. Ad-hoc Judge Shri K.V. More has disposed off the Notice of Motion at the ad-interim stage itself. Though nothing survives in the Suit, the Suit is

kept pending.

ii. In Suit No. 875 of 2019 the same Judge has passed an Order on 26th April, 2019, wherein without going into the issue as to whether the subject structure is authorized or not, the learned Judge has passed an Order granting relief against the MCGM only on the ground that if a party intends to move the Court for obtaining interim reliefs, the action of demolition should be postponed by 48 hours to enable a party to get his grievance redressed by the Court. The Plaintiff was already before the Court. The Court could have now examined the merits of the case, but once again disposed off the Notice of Motion by passing an order of injunction until due process is followed. No further steps were required to be taken in view of the building being admittedly constructed without obtaining any permission from the MCGM. Again the Suit is kept pending.

iii. In Suit No. 1831 of 2019, the very same Judge Shri K.V. More has passed an Order of Status Quo dated 29th July, 2019 and has adjourned the Notice of Motion No. 2624 of 2019 in Suit No. 1831 of 2019. The learned Judge Shri K.V. More recorded in the Order dated 29th July, 2019 that there are in all three connected matters, which are placed on board on 26th August, 2019. The learned Judge Shri K.V. More has lost sight of the fact that the Notices of Motion taken out in other two Suits, are already disposed off by him by directing that the MCGM shall not take coercive action / carry out demolition without following due process of law.

4. In view of such orders passed by the City Civil Court without application

of mind and without going into the merits of the matters, this Court in the Writ Petitions filed before it, is unable to give direction to the MCGM to proceed with the action of demolition despite the construction being admittedly unauthorized. We also do not know what assistance is provided by the Advocates appearing for the MCGM before the City Civil Court at Dindoshi.

5. In view of the above, we direct the Principal Judge, City Civil Court, Mumbai to place Notice of Motion No.2624 of 2019 in Suit No. 1831 of 2019 before the concerned Judge for final hearing on 15th January, 2020 and pass appropriate orders on merits. As far as the Notice of Motion taken out in Suit No. 160 of 2019 and Suit No. 875 of 2019 is concerned, we are not passing any orders since the City Civil Court at Dindoshi has already directed the MCGM not to take coercive action without following due process of law. The MCGM is always free to act as per the law and take action against the unauthorized structure.

6. A copy of this Order shall be forthwith forwarded to the Principal Judge, City Civil Court, Mumbai.

7. A copy of this Order shall also be forwarded to the Chief Law Officer, MCGM to take immediate action and ensure that lawyers, who can give effective assistance to the Court are briefed in the matters pending before the Court.

8. Stand over to 16th January, 2020.

(B.P.COLABAWALLA, J.)

(S.J.KATHAWALLA, J.)