

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

**APPEAL FROM ORDER (ST) NO.94528 OF 2020
WITH
INTERIM APPLICATION (ST) NO.94529 OF 2020**

Gorai Machhi Mar Sahakari
Sanstha Limited.,
A Co-operative Society duly
Registered under the Maharashtra
Co-operative Societies Act, 1960
Having address at Survey No.265,
CTS No.1145, Near Gorai Cross
Bus Stand, Gorai Manori Road,
Borivali (West), Mumbai 400 091

... Appellants
(Org. Plffs.)

Vs

The Municipal Corporation of
Gr. Mumbai, a body corporate
Duly constituted under the
provisions of M.M.C. Act, 1888,
Having their head office at
Mahapalika Bhavan,
Mahapalika Marg,
Mumbai 400 001
(R/Central Ward Office)

... Respondents
(Org. Defts.)

...

Mr. Pradeep Thorat i/by Ms. Aditi S. Naikare for the
Appellants.

Ms. Madhuri More for MCGM/Respondents.

2020.odt

CORAM : SANDEEP K. SHINDE J.
RESERVED ON : 14th DECEMBER, 2020.
PRONOUNCED ON : 7th JANUARY, 2021.

JUDGMENT:

Plaintiffs in Long Cause Suit No.749 of 2020 have preferred this appeal against the order dated 22nd September, 2020 passed in the Draft Notice of Motion by the learned Judge, City Civil Court, (Borivali Division), Dindoshi, Goregaon, Mumbai inter-alia refusing to restrain the Corporation from executing/enforcing notice issued under Section 354A of the Mumbai Municipal Corporation Act ("MMC Act" for short)

2 In the subject suit, plaintiffs have challenged validity of the notice issued under Section 354-A of the MMC Act and the order passed by the Designated Officer dated **27th-29th July, 2020.**

FACTS:

3 That upon receiving the complaint RC/009/22/07/2020/154, Officer of the Respondent-Corporation visited suit premises on 22nd July, 2020. He found ongoing unauthorised construction of independent structure (not extention of existing structure) with brick masonry wall and AC sheet roof admeasuring 13.10 mtrs X $(4.25+5.8)/2$ metres with average height of $(3.0+3.6)/2$ metres, at Gorai Macchi Mar Sahakari Sanstha Limited, Borivali (West), Mumbai 91. Officer enquired about the permission for said ongoing construction but the plaintiffs could not produce the same. Thereupon, Officer prepared a inspection report dated 22nd July, 2020, along with twelve photographs. Inspection report is at Page 14 and photographs are at Pages 16 to 22 of the affidavit-in-reply filed by the Assistant Engineer of the Municipal Corporation of Greater Mumbai. I have perused it.

4 This inspection report was placed before the Designated Officer (Building & Factory), who after perusing the same, issued a notice under Section 354-A of the Act on 22nd July, 2020, whereby, plaintiffs were directed to stop construction of unauthorised, which was in progress and further directed to produce permission granted by the Competent Authority, i.e., Building and Proposal Department. In response to this notice, appellants submitted documents other than 'construction permission'. The tenor of the plaintiffs' reply suggests that permission was not required since plaintiffs' were carrying on the 'tenantable repairs'. In paragraph no.8 of the reply, it is stated:

"8 My client states that my client has not carried out any unauthorized construction as alleged in the impugned notice contrary to the provision of Section 342 and 347 of the MMC Act. My client states that my client had carried out and completed only tenantable repairs to the structure in question such as plastering, painting and replaced the decayed A.C.Sheet of the roof with new ones. My client states that only the said tenantable repairs were carried

2020.odt

out without any addition and alteration to the structure in question and such repairs do not require any permission u/s. 342 and 347 of the MMC Act from the Municipal Corporation."

5 Besides, it is contended that the suit structure is situated in slum area and was in existence since before 1976. Also, contended that suit structure was censused under RXC 29-1/1A in the name of Mr. Pascol Kiny in the year 1976 and the Competent Authority had issued Census Certificate dated 21st December, 1978 in favour of said Pascol Kiny giving the details of structure. It is, therefore, contended that structure in question is protected one and the same was not recently constructed as alleged the impugned notice.

6 In support of aforesaid contentions, plaintiffs have placed on record a Census Certificate issued by the Office of the Controller of Slums, Bombay and B.S.D., Old Customs House, Yard, Fort, Mumbai. It is at

Page 59 of the paper-book. This certificate relates to structure RXC 29/1/1A admeasuring 43 X 17 sq.ft. approximately. The Plaintiffs had also produced, demand notice issued by the Assessment and Collection Department of the Corporation and a few electricity bills.

7 Yet another contention raised was that, notice under Section 354-A of the MMC Act could not have been issued, since at the material time, suit construction was complete. Reliance has been placed on the judgment and order of this Court in the case of **Goverdhan Ramnaresh Singh v. The Municipal Corporation of Greater Mumbai** passed in Appeal From Order No.257 of 1999.

. I have perused the cited judgment wherein though stop-work notice was issued, the Trial Court had observed "*here one fact is clear so far as such stop-work notice is even though styled, no record is*

2020.odt

coming before the Court that really the work was in progress and the stages of progress of the construction is recorded by the office of the Defendants". In the back-drop of these facts/material, it was held Section 354-A of the MMC Act was not attracted. However, in this case, report dated 22nd July, 2020 shows; status of structure ongoing; and suit construction was neither extension of the existing structure nor was in nature of repairs, but independent and it was not occupied. Soon thereafter on 23rd July, stop-work notice was issued. In fact, photographs fully support the report. In view of these facts, appellants' contention that notice under Section 354-A of the MMC Act could not have been issued and acted upon, is rejected.

8 Appellants, would contend that for carrying out 'tenantable repairs' of the existing structure, building permission was not required. In support of this contention, appellants' counsel has relied on Census

2020.odt

Certificate dated 10th November, 1976 issued by the Controller of Slums. He certified, structure no. RXC/29-1/1 admeasuring 43 X 17 sq.ft. (*emphasis supplied*) was issued to one Pascol Keny at CTS 1145, Survey No.265, Gorai Village. In my view, this piece of document no way supports the appellants' case, in-as-much as measurement of the structure in the certificate as shown was 43 X 17 sq.ft., whereas inspection report dated 22nd July and the stop-work notice was issued in respect of the unauthorized construction, admeasuring 13.10 mtrs. X (4.25 + 5.8) 2 mtrs. with average height of (3.0 + 3.6)/ 2 mtrs. approximately. It makes very clear that plaintiffs had not carried out 'tenantable repairs' but constructed independent structure without first obtaining building permission from the Corporation. Moreover, the said certificate relates to structure occupied by Pascol Keny at CTS 1145, Survey No.265. However, no material has been placed on record by the plaintiffs to show or to

2020.odt

establish prima-facie, as to how are they concerned with the structure certificate issued by the Controller of Slums. Therefore, this certificate no way furthers plaintiffs' case.

9 In fact, inspection report and photographs distinctly indicate that the plaintiffs started construction without permission, which was neither extension of existing structure nor was it a work in the nature of repair. Besides, evidence sought to be produced to contend that structure was in existence since before 1976 is not reliable and hence, not accepted.

10 In consideration of the facts of the case and the evidence on record, no interference is called for in the impugned order.

11 Appeal is dismissed. Interim stay is vacated.

All the applications are, accordingly, disposed of.

(SANDEEP K. SHINDE, J.)