

MHCC040067502022



IN THE BOMBAY CITY CIVIL COURT AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI

DRAFT NOTICE OF MOTION
IN
L.C. SUIT NO.1768 OF 2022
(CNR No.MHCC04-006750-2022)

Mumbai Music Institute
Private Ltd. & Anr.

..Plaintiffs

Versus

The Municipal Corporation of
Greater Mumbai.

..Defendant

Adv. Mr. A.L. Shukla for the plaintiffs.
Adv. Mr. Santosh Mali for the defendant.

Coram : Her Honour Judge
Smt. V.D. Ingle
(C.R.No.8)

Date : 18th August, 2022

AD-INTERIM ORDER

By way of ad-interim relief, the plaintiffs seek to restrain the defendant from executing the impugned notice dated 01.01.2020 issued under Section 53(1) of MRTP Act and to consider the reply dated 26.07.2022 submitted by the plaintiff No.2 and additional reply dated

18.11.2021 submitted by plaintiff No.1 and pass fresh order thereon and in case of adverse order, to restrain defendant from executing impugned notice and speaking order for a period of 15 days from the date of communication of the said fresh speaking order.

2. Heard both the sides.

3. Perused the plaint alongwith documents annexed thereto, Notice of Motion and affidavit in support and the documents filed alongwith list by the defendant.

4. It is the case of the plaintiffs that plaintiff No.1 is a licensee and plaintiff no.2 is the owner of the suit premises, which has been let out to plaintiff No.1 on leave and license basis. The plaintiffs have in their possession various documents in respect of the suit premises. It is contended by the plaintiff that notice was issued under Section 53(1) of MRTP dated 1.01.2020 whereby the noticees were directed to restore/demolish the premises as per approved plan or apply under Section 44 of MRTP Act for retention of the work before the Executive Engineer (Building Proposal) City of MCGM, within one month from the receipt of the said notice. It can be seen from the notice dated 01.01.2020 that in the schedule it has been mentioned that unauthorised construction of mezzanine floor, addition, alterations and change of user beyond approved plan dated 09.09.1986. Thereafter Speaking order dated 4.09.2021 was passed by the Designated Officer holding that the noticees in reply to the said notice has submitted documents however, it has been

observed that the documents submitted does not prove the satisfactory or conclusive proof documentary evidence to prove the notice structure as mentioned in notice under Section 53(1) of MRTP Act is constructed by obtaining permission from MCGM or any other competent authority. It is further seen that the plaintiffs have submitted reply dated 3.02.2020, 26.07.2022 and additional reply dated 18.11.2021 submitted on 8.12.2021. The speaking order has been passed on 4.09.2021.

5. The defendant has produced inspection report dated 1.01.2020 which shows that the construction is an independent structure and the description of the structure has been mentioned as unauthorised construction of mezzanine floor, addition, alterations and change of user beyond approved plan. Further the notice under Section 53(1) of MRTP Act is of 1.01.2020 and order is passed on 4.09.2020. The reply which is submitted by the plaintiff on 20.06.2022. Here it is important to note that notice under Section 53(1) of MRTP Act itself is a direction and it does not require any reply consideration and passing Speaking order. It is only for the plaintiffs either to show that the alleged unauthorised construction of mezzanine floor, additions and alterations carried out in the suit premises is not beyond the approved plan or they have taken requisite permission from the competent authority in respect of alleged unauthorised work. But the plaintiffs have not shown that the alleged unauthorised work is part of approved plan dated 9.09.1986 nor they have got requisite permission from the competent authority of MCGM for sanction. Therefore, in such circumstances, question of considering the reply does not arise. Further in view of amendment to Section 53 of MRTP Act, phrase "being not less than

one month” does not exist, as it has been deleted.

6. Further the impugned notice has been duly served upon the plaintiffs, which can be seen from the reply letter dated 3.02.2020 (Exhibit-I to the plaint). Further by the impugned notice, opportunity was granted to the plaintiffs to apply under Section 44 of the MRTTP Act for retention of work before the competent authority within one month or restore the structure to existing position, which the plaintiffs ignored. At this stage it appears that the plaintiffs have carried out construction of mezzanine floor, additions and alterations and changed the user of the premises which is unauthorised. Further there is not a single document placed on record to show that after issuance of notice under Section 53(1) of the MRTTP Act, the plaintiffs have filed an application for retention under Section 44 of the MRTTP Act, instead they have filed the present suit in the year 2022. There is unauthorised construction of mezzanine floor, additions and alterations and change of user, which is not work of maintenance/improvement, which can be seen from the photographs filed by the defendants alongwith list (Exhibit-5) and therefore, the plaintiffs cannot take aid of section 43(i) of the MRTTP Act by contending that no such permission is necessary for carrying out work of maintenance/improvement or other alterations in compliance with any order or direction passed by any authority.

7. Further the suit site was again inspected on 01.04.2022 and it was found by the defendant that the plaintiffs have not complied the requisitions contained in the notice and are continuing to carryout the unauthorised development, even after the notice was duly served upon

them. Therefore, letter was delivered to the Senior Inspector of Police, Charkop Police Station on 25.04.2022, copy of which is annexed with the list, Exhibit-5 for taking cognizance of the offence committed under Section 53(7) of MRTP Act and deal with the accused in accordance with law. The defendant have issued notice to the plaintiffs for change of user also. Further in view of Section 149 of MRTP Act, there is express bar to question any action, every order, direction passed by State Government or Planning Authority/Development Authority under the MRTP Act in any suit or other legal proceedings. In view of above discussion, the plaintiffs have not made out any prima facie case for grant of ad-interim relief. I, therefore, pass the following order:-

ORDER

Ad-interim relief claimed by the plaintiff is refused.

Date : 18.08.2022

(Smt. V.D. Ingle)
Judge
City Civil Court,
(Borivali Division),
Dindoshi, Goregaon,
Mumbai

Dictation give by HHJ on computer on	: 18.08.2022
Checked and signed by HHJ on	: 22.08.2022

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED JUDGMENT/ORDER.”

UPLOAD DATE

AND TIME : 24.08.2022 12.05 P.M.

ATUL SURYAKANT BHOGTE

NAME OF STENOGRAPHER

Name of the Judge (with Court Room No.)	HHJ Smt. V.D.Ingle (Court Room No.8)
Date of Pronouncement of Judgment/Order	18.08.2022
Judgment/Order signed by P.O. on	22.08.2022
Judgment/Order uploaded on	24.08.2022