



Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**WRIT PETITION (L) NO. 26795 OF 2023**

King George V Memorial & Anr ...Petitioners  
*Versus*  
Municipal Corporation of Greater Mumbai & Ors ...Respondents

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**Mr Dinesh Purandare, with Kunal Mehta, Komal Khushalani,  
Prangana Barua & Hunaut Singh, i/b M/s Crawford Bayley &  
Co, for the Petitioners.**  
**Mr Kunal Waghmare, for the Respondent-MCGM.**  
**Ms Jyoti Chavan, AGP, for the Respondent-State.**

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**CORAM G.S. Patel &  
Kamal Khata, JJ.**  
**DATED: 6th December 2023**

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1. Respondents waive service.
2. Although Mr Waghmare, learned Advocate for the Respondent, the Municipal Corporation of Greater Mumbai (“MCGM”) will undoubtedly need to take instructions, we believe this is an appropriate case for a grant of immediate interim relief. This will be apparent from the reasons that follow.

3. At Lower Parel on Dr E Moses Road, near Mahalakshmi, Mumbai stands the 1st Petitioner Hospital. It is run by a Charitable Trust. This occupies a large tract of land of 36300 sq mts. It is a very old and very well known hospital. The hospital has several facilities, units, divisions and so on.

4. The immediate objection in the Petition is to two notices at Exhibit "L" and Exhibit "O" of, respectively 29th December 2021 and 11th March 2022 issued by the MCGM. These were directed against an iron fence or fencing that the Petitioners installed on certain portions of the property. Now the reason this became necessary was because the Petitioners found that over time large portions of the trust and hospital property were under illegal occupation and encroachment.

5. As matters currently stand, these are broadly divisible into two classes. One relates to staff quarters. These are allotted to the hospital's staff. But 24 of the 36 staff quarters are now under unauthorised occupation by retired staff members or their families or even rank outsiders.

6. Within the compound of the King George V Memorial Hospital there are also open spaces. These are now found to be encroached by illegal occupants and trespassers and this trespass and encroachment increases steadily occupying more and more of the hospital's land. There are complaints of nuisance and a compromising of the safety and security of the hospital staff, patients and residents.

7. According to the Petitioners what they have put up is a safety fence to reinstate the normal use of the land and to prevent further encroachment.

8. A single glance at Exhibit “L” and Exhibit “O” shows that the MCGM notice is directed only against the construction of fencing with mild steel pipes with a total length of 41.98 mts and a height of 2 mts. This is specifically noted to be within the open space near the residential chawls of the King George V Memorial Hospital at Mahalaxmi. We find a reiteration of this at Exhibit “O” at page 98.

9. As Mr Purandare for the Petitioners points out it is certainly curious and perhaps ironical that the MCGM shows such enthusiasm and alacrity to remove a protective fence, but this municipal enthusiasm is conspicuous by its absence in regard to trespassers. There are at least 18 or so eviction actions that are pending but those will be presumably in regard to one or more staff quarters.

10. These encroachments typically run to a pattern and follow a trajectory. We are particularly anxious to avoid a situation where at some point in the future the encroachments become so many that we are confronted with a possible proposal to convert the whole hospital into a slum scheme. That is absolutely the last thing that this city needs. We accept Mr Purandare’s statement that other than the protective fencing nothing further is being done at this stage.

11. We grant time to the MCGM to file an Affidavit in Reply. In that Affidavit in Reply the MCGM will have to necessarily set out what it found on site because both notices mention a site inspection. In other words, we would very much like to know whether the MCGM noted any unauthorised constructions or occupancies in the open spaces or only saw the mild steel fence in respect of which it has issued a notice.

12. That Affidavit in Reply is to be filed and served by 5th February 2024. An Affidavit in Rejoinder is permitted by 4th March 2024. In the meantime, there will be an ad-interim injunction in terms prayer clauses (c)(i), (c)(ii) and (c)(iii) which read thus:

“(c) Pending the hearing and final disposal of the Writ Petition, this Hon’ble Court be pleased to:

(i) stay the effect and implementation of the Impugned Notice dated 29th December 2021 (Exhibit “L”) and Impugned Order dated 11th March 2022 (Exhibit “O”) and

(ii) a temporary order and injunction restraining Respondent No.1 or any of its officers or employees / agents, from in any manner whatsoever (directly and/ or indirectly), acting upon or taking any further steps pursuant to the Impugned Notice dated 29th December 2021 (Exhibit “L”) and Impugned Order dated 11th March 2022 (Exhibit “O”).

(iii) direct Respondent No.1 to maintain status quo and not to take any adverse action or coercive steps regarding the notice structure which is the subject matter of challenge under this Petition.”

13. List the matter on 15th February 2024.

14. Previous orders, if any, to continue until the next date.

**(Kamal Khata, J)**

**(G. S. Patel, J)**