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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
FIRST APPEAL NO. 921 OF 1999

Shri Laxman Nagarbhai Patel
 Indian Inhabitant, of Bombay
 residing at J. B. Fonseca Chawl
 (also known as Brass Patel Chawl
 and/or Police Patil Chawl
 and/or A. D. Jani & Son Chawl)
 situated at Akurli Road, Near Old
 Post Office, Kandivali (East),
 Mumbai-400 067

... Appellant

Versus

The Bombay Municipal Corporation
 of Greater Bombay (a Corporation
 constituted under the Bombay
 Municipal Corporation Act) having
 their office at Municipal Offices,
 Mahapalika Marg, Fort,
 Mumbai-400 001

... Respondent

Mr. Amit H. Yadav for the Appellant.

Mr. Pradeep Patil a/w. Ms. Pallavi Khale i/b. Ms. Komal
 Panjabi for Respondent-BMC.

CORAM: GAURI GODSE, J.

DATE : 25th AUGUST 2026

JUDGMENT:**BASIC FACTS:**

1. This first appeal is preferred by the original plaintiff to challenge the judgment and decree passed by the trial court dismissing the appellant's suit. The suit was filed to challenge the notice dated 11th October 1982 issued under Section 351 of the Mumbai Municipal Corporation Act, 1988 ("MMC Act"), and the order dated 10th November 1982 passed by the Assistant Engineer (Buildings and Factories, R/South Ward) ("Assistant Engineer of the Corporation"). The plaintiff also prayed for an injunction restraining the Corporation from demolishing the suit premises.

2. The suit premises are described as a structure consisting of GI Sheet walls and roof admeasuring 11.90 x 4.30 mtrs. The impugned notice describes the offending structure as an unauthorised structure admeasuring 11.90 x 4.30 mtrs having Brick Masonry Walls (B.M.Walls) and A.C.Sheet roof. By order dated 10th November 1982, the Assistant Engineer of the Corporation, in reference to the plaintiff's letter dated 15th October 1982 recorded that the plaintiff's reply was not

satisfactory as it did not prove that the notice structure is an authorised structure and thus requested the plaintiff to remove the same within four days from the date of the order failing which it would be removed by the corporation.

CASE OF THE PLAINTIFF:

3. The plaintiff contended that the suit premises are a residential structure with GI Sheet walls and roof. The plaintiff has further referred to the application for repair permission and the corporation's response. According to the plaintiff, by letter dated 1st June 1982, addressed to the plaintiff, permission to carry out repairs was granted. In the application dated 10th March 1982, the plan for the proposed repairs was annexed, and the application for repairs as per the said plan was approved by the corporation. Hence, according to the plaintiff, the repair work was carried out strictly in pursuance of the plan submitted by the plaintiff through his architect vide application dated 10th March 1982. The plaintiff has further explained that his application was inadvertently mentioned as application dated 1st March 1982 in the corporation's letters. The plaintiff has thus contended that the construction that was carried out

after removing the earlier construction was in accordance with the repair permission.

CASE OF THE DEFENDANT:

4. In the written statement, the corporation contended that repair permission was never granted, and that the plaintiff was informed that the owner's application to repair the damage to the existing structure was approved upon payment of Rs. 10,000/-. Thus, it was contended that permission to the plaintiff was never granted, and that what was permitted was repairs to the damage caused during the demolition of the building that was to be redeveloped. Thus, it was contended by the corporation that the original structure, containing GI sheet Walls and roof, was demolished, and new construction was carried out with B.M. Walls and A.C. Sheet roof. Hence, the offending structure was not the original structure of GI sheet walls and roof but an unauthorised structure of B.M.Walls and A.C. sheet roof carried out by the plaintiff.

5. The corporation further contended that a final order was passed by the Deputy Commissioner on 27th November 1982 directing demolition of the suit structure. It is further contended

that before the corporation officer could demolish the suit structure as per the final orders, the plaintiff had secured an ad-interim injunction; therefore, the final order and the impugned notice were not implemented.

FINDINGS BY THE TRIAL COURT:

6. Both the parties led evidence in support of their rival contentions. The trial court held that the plaintiff could not prove that any repair permission was granted to the plaintiff pursuant to the application dated 10th March 1982. After examining the entire evidence on record, it is held that no objection mentioned in the letters relied upon by the plaintiff was with reference to the repair permission to the builder and the plaintiff's application for repairs as per the plan annexed for replacing GI Sheet was never granted. The plaintiff's contention, therefore, that the construction carried out was as per the repair permission is disbelieved by the trial court.

7. The letters pertaining to repair permission submitted by the plaintiff through his architect, the plan annexed to the repair permission, and the no objection of the corporation's officers referred to and relied upon by the plaintiff are

exhaustively considered by the trial court. It is held that the builder was under an obligation to repair the structure, and the no-objection to carry out the repair was in reference to the permission granted to the builder/owner. The letter issued by the corporation indicated that the plaintiff had been informed that the repair permission had already been granted to the owner, and thus a separate application for repair submitted by the plaintiff through his architect could not be permitted. Thus, the contention raised on behalf of the corporation, interpreting the letters as a no objection, was held by the trial court to be a no objection granted to the builder-owner, and not to the repair permission, as contended by the plaintiff.

8. The trial court further referred to the corporation's contentions that the complaint was filed by the society, alleging that the plaintiff made allegations regarding the B.M. Walls and A.C. Sheet roof. Pursuant to the society's complaint, an inspection was carried out, and it was found that the plaintiff had constructed a new structure. Hence, it is held that the corporation issued notice under Section 351 of the MMC Act, for the offending structure described as the construction of B.M.Walls and A.C.Sheet roof carried out by the plaintiff. In the

absence of any repair permission or any proof of the existence of the offending structure prior to the datum line, the trial court disbelieved the plaintiff's contention for protection of the suit premises.

9. With regard to the contention raised on behalf of the plaintiffs that the Assistant Engineer of the Corporation could not have passed an order and was not authorised to order demolition, the trial court held that the plaintiff had never challenged the impugned notice and order dated 10th November 1982 on the ground of the authority of the Assistant Engineer. Thus, in the absence of any satisfactory evidence that the offending structure described in the impugned notice was in existence before the datum line or that it was constructed with any valid permission, the trial court has refused to grant any relief to the plaintiff.

POINTS FOR CONSIDERATION:

10. Hence, the point to be decided in this First Appeal is (i) whether the plaintiff was granted any repair permission to replace GI sheet walls and roof with BM walls and AC Sheet, (ii) whether the offending structure was authorised and the

impugned notice was illegal, (iii) whether the suit premises was protected on the ground that it existed prior to the datum line and (iv) whether plaintiff was entitled to any relief as prayed.

SUBMISSIONS ON BEHALF OF THE APPELLANT
("PLAINTIFF"):

11. Learned counsel for the plaintiff submits that the plaintiff through his architect had submitted an application dated 10th March 1982 along with the enclosed plan for carrying out repairs. In reference to the plaintiff's application for repairs, made through his architect, the Assistant Engineer of the Corporation granted permission for repairs on 1st June 1982.

12. Learned counsel for the plaintiff relied upon an application along with the attached plan and the letter dated 1st June 1982 issued by the Assistant Engineer of the Corporation. He also relied upon the noting produced at Exhibit "U " stating that no objection was granted for the repair permission to the tenement. He further relied upon the letter dated 23rd October 1982, issued by the Assistant Engineer, stating that the plaintiff's reply was not accepted because there

was no evidence that the suit structure existed prior to the datum line.

13. Learned counsel for the plaintiff submitted that by reply dated 15th October 1982 the plaintiff had contended that there was no unauthorised construction carried out, and the shed under reference in the notice was the same structure which was referred to in the assessment extract relied upon by the plaintiff. Learned counsel for the plaintiff relied upon the assessment extract produced at Exhibit-F, which referred to the reference number of the structure as A.C. Shed, which existed prior to 1961-62. With reference to his structure number in the assessment extract, he relied on the repair permission and application submitted to carry out repairs. He thus submits that the plaintiff's structure is in existence prior to 1961-62 and pursuant to the repair permission granted by the corporation, repairs were carried out to the original existing structure. Once permission to carry out repairs to the structure existing prior to the datum line was granted, the corporation has illegally issued a notice alleging unauthorised construction. He thus submits that the suit premises are an old structure protected as existed prior to the datum line. The repairs are

carried out pursuant to the repair permission granted by the corporation. Hence, the impugned notice and the order passed by the Assistant Engineer are illegal.

14. He further submits that the corporation has pleaded that after the order passed by the Assistant Engineer, the Deputy Commissioner has also passed final orders. He submits that there is no reason for the corporation to suppress the copy of the order. Not producing the copy of the final order passed by the Deputy Commissioner would warrant an adverse inference against the corporation. According to the learned counsel for the plaintiff, in view of the adverse inference, the plaintiff's contention needs to be accepted that the construction was carried out as per the repair permission and it was not considered by the Assistant Engineer or the Deputy Municipal Commissioner who had passed the final order.

15. Learned counsel for the plaintiff, therefore, submits that the trial court has failed to correctly appreciate the evidence led on behalf of the plaintiff regarding the construction carried out as per the repair permission. He further submits that the trial court failed to consider the corporation's conduct in failing

to produce the final order allegedly passed by the Deputy Municipal Commissioner. He thus submits that the impugned judgment would warrant interference on the ground of incorrect appreciation of the evidence on record and ignoring the material evidence produced to prove that the repair permission was granted and the structure in existence was an old structure with the repairs carried out pursuant to the repair permission. Hence, according to the learned counsel for the plaintiff, the plaintiff would be entitled to a decree as prayed for setting aside the notice under Section 351 of the MMC Act and the order passed by the Assistant Engineer of the Corporation. The plaintiff would also be entitled to protect the suit structure from high-handed demolition by the Corporation.

**SUBMISSIONS ON BEHALF OF THE RESPONDENT
(CORPORATION):**

16. Learned counsel for the corporation relied upon the description of the suit premises mentioned as GI Sheet Walls and roof. He submitted that the offending structure is not in respect of the GI Sheet walls, and the specific allegation in the suit notice concerns the unauthorised construction of B.M.

Walls and A.C. Sheet roof. Learned counsel for the corporation relied upon the application filed by the plaintiff through his architect attaching the plan for the proposed repairs. The application for repairs filed through the plaintiff's architect describes the proposed repairs as replacing the GI Sheet and roof and constructing a wall. The letter dated 1st June 1982, relied upon by the plaintiff as repair permission, refers to the plaintiff's architect's letter and letters dated 12th May 1981 and 26th April 1982.

17. He submitted that by letter dated 12th May 1981, the plaintiff was informed that, with reference to his complaint for repairs to the existing structure, necessary action would be taken, and that, for compliance with the condition for repairs, a deposit of Rs.10,000/- had been collected from the owner. So far as the letter dated 26th April 1982 is concerned, learned counsel for the corporation submitted that by the said letter, the plaintiff was informed that the office of the Assistant Engineer (Building Proposal) of the Corporation had no objection to the Ward office granting repair permission for the premises referred to in the letter. He submits that the noting dated 26th April 1982 was again a no-objection to the grant of

permission for repairs to the tenement, as per the MMC Act and the policy. He submits that none of the notings relied upon by the plaintiff refers to any grant of permission for carrying out repairs as per the plan annexed to the application filed through the plaintiff's architect.

18. Learned counsel for the corporation also referred to the letter dated 3rd April 1981 issued by the plaintiff and addressed to the City Engineer of the Corporation. He submits that the plaintiff filed a complaint seeking to direct the builder to repair the plaintiff's damaged structure before granting an occupation certificate for the building. He therefore submits that the no objection for the repair permission referred to and relied upon by the learned counsel for the plaintiff does not pertain to any repair permission for replacing the GI Sheet Walls and roof with B.M.Walls and A.C.Sheet roof. He submits that the no objection for repair permission was pursuant to the complaint letter submitted on behalf of the plaintiff, alleging damage to his structure. He therefore submits that the no objection referred to by the learned counsel for the plaintiff is misinterpreted to mean that the repair permission was granted for replacing the GI Sheet Walls and roof with B.M. Walls and

A.C. Sheet roof. He submits that the offending structure is the one with B.M. Walls and A.C. Sheet roofs, and not the original structure consisting of GI Sheet Walls and roof. He therefore submits that the unauthorised construction of B.M. Walls is an offending structure. Hence, there is no question of any protection on the ground that the old structure existed prior to the datum line.

19. To support his submissions that such an unauthorised construction cannot be protected and that procedural lapses, if any, pointed out by the applicant cannot be a ground to tolerate an unauthorised structure, he relied upon the decision of the Apex Court in ***Municipal Corporation of Greater Mumbai and Others vs. M/s. Sunbeam High Tech Developers Private Limited***¹. He relied upon the observations of this court in ***Tushar Guru Salien vs. State of Maharashtra and Others***². He further relied upon the decision of the Apex Court in ***Seema Arshad Zaheer and Ors vs. Municipal Corporation of Greater Mumbai and others***³. He submits that a consistent view has been taken by this court as well as the Apex Court that in the absence of any documents regarding the existence of the

¹ Civil Appeal No. 7627 of 2019

² PIL No. 67 of 2017

³ (2006) 5 SCC 282

structure prior to the datum line in respect of the notice for demolition or any satisfactory evidence that the structure is authorised, the corporation's action of demolition cannot be questioned.

20. He further submits that the objection raised on behalf of the plaintiff that the impugned order passed by the Assistant Engineer was without any authority is not pleaded by the plaintiff. He submits that the plaintiff has never amended the plaint challenging the final order passed by the Deputy Municipal Commissioner and that the corporation was never called upon to produce a copy of the final order. Even otherwise, he submits that in the absence of any satisfactory evidence that the offending structure was authorised, the plaintiff would not be entitled to any relief as claimed in the suit.

21. Learned counsel for the corporation also relied upon Section 342 of the MMC Act to support his submissions that the repair permission is required to be issued in terms of the said provision. In the absence of any repair permission for replacing the GI Sheet Walls and roof with B.M. Walls and A.C. Sheet roof, the offending structure cannot be protected.

He therefore submits that the impugned judgment and decree would not warrant any interference.

22. Learned counsel for the corporation also relied upon the decision of this court in *Siesta Industrial and Trading Corporation and Others vs. The Municipal Corporation of Greater Mumbai and Others*⁴. He submits that the division bench of this court has taken a view that the repair permission granted by the corporation itself would not be conclusive proof that the structure existed prior to the datum line and the alteration or modification to the structure cannot be presumed as existence of the structure prior to the datum line. Learned counsel for the corporation therefore submits that the plaintiff has admittedly replaced the GI Sheet walls and roof with B.M.Walls and A.C.Sheet roof which supports the allegations in the notice under Section 351 of the MMC Act describing the offending structure. Hence, the plaintiff is not entitled to any protection.

CONSIDERATION OF PLEADINGS AND EVIDENCE:

23. I have carefully perused the pleadings, evidence and documentary evidence on record. I have verified the contents

⁴ Writ Petition No. 3448 of 2023

of the letters relied upon by the plaintiff to contend that a repair permission was granted and that the structure is as per the permission, and therefore would require protection. Learned counsel for the corporation is right in correctly interpreting the application for repairs filed by the plaintiff on 10th March 1982 along with the plan. I have perused the plan. The plan clearly refers to replacing GI Sheet walls by construction of B.M.Walls. The plaintiff's complaint letter clearly indicates the grievance raised regarding the damage caused by the builder and further states that an occupation certificate must not be granted to the builder until the damage caused to the plaintiff's structure is repaired. In reference to the plaintiff's complaint, the Corporation had intimated the plaintiff regarding the repairs and the faithful compliance deposit taken from the owner. The endorsement of the Assistant Engineer for the Corporation, of the no objection for repairs, does not pertain to the repair permission dated 10th March 1982 along with the plan annexed by the plaintiff's architect.

24. By letter dated 18th March 1982, the plaintiff's architect was informed, with reference to the application dated 10th March 1982, that the owner, i.e., the plaintiff, had already been

informed by the office of the Assistant Engineer, vide letter dated 10th July 1981, regarding the repair permission. The letter dated 10th July 1981 is also part of the record, which intimates the plaintiff, with reference to his complaint letter and the instructions to the architect to carry out repairs to the structure under reference, by the Assistant Engineer (Building Proposal), to cooperate in carrying out the repairs. It is further intimated that the grant of separate repair permission therefore would not arise.

25. The letter dated 1st June 1982, relied upon by the plaintiff as a repair permission, has been carefully perused by me. The said letter refers to the architect's letter dated 10th March 1982 for carrying out repairs, and to the letters dated 12th May 1981 and 26th April 1982. As discussed in detail in the above paragraphs recording the submissions on behalf of the corporation, neither of these letters referred to the grant of any permission to the plaintiff as per the attached plan for replacing the GI Sheet walls and roof with the construction of B.M. Walls and A.C. Sheet.

26. The assessment extract relied upon by the plaintiff refers to the AC shed. The description of the structure in the

assessment extract and the application for permission also refer to the existing structure as assessed. However, it cannot be ignored that the offending structure, as per the impugned notice, is not the structure in existence prior to 1961-62, but rather the construction of BM Walls and A.C. Sheet roof carried out by the plaintiff. The plaintiff's pleadings and the documents relied upon by the plaintiff also refer to the construction carried out by the plaintiff, which is as described in the impugned notice. Thus, admittedly, the plaintiff has replaced the GI Sheet Walls and roof by carrying out new construction of B.M.Walls and A.C.Sheet roof by referring to the repair permission. Thus, the protection of the structure on the ground that it is in existence prior to the datum line would not arise.

ANALYSIS AND CONCLUSIONS:

27. The question therefore to be considered is whether the admitted construction of B.M. Walls and A.C.Sheet roof carried out by the plaintiff is authorised or is carried out without any valid permission. The letter dated 1st June 1982, relied upon by the plaintiff as repair permission, is rightly not accepted by the

trial court as repair permission to carry out the construction of B.M Walls and A.C.Sheet. Hence, in the absence of any evidence to show that the construction is in accordance with any valid permission, the findings recorded by the trial court that the construction of the offending structure is unauthorised would warrant no interference.

28. Even otherwise, Section 342 of the MMC Act refers only to tenantable repairs and not to carrying out new construction of B.M. Walls. None of the letters issued by the corporation and the no objections referred to therein pertains to any permission permissible under Section 342 of the MMC Act or construction of the B.M. Walls.

29. The contention regarding the authority of the Assistant Engineer to issue the impugned order dated 10th November 1982 would not have any bearing on the validity of the impugned notice. The plaintiff has not pleaded any objection to the authority of the Assistant Engineer to issue the letter dated 10th November 1982. In response to the plaintiff's reply to the impugned notice, learned counsel for the corporation was right in submitting that the designated officer is permitted to

exercise the powers under Section 351 of the MMC Act; however, in the absence of any specific allegations, the same would not warrant any consideration in the suit. Even otherwise, the letter dated 10th November 1982 issued by the Assistant Commissioner refers to the reply submitted by the plaintiff in response to the impugned notice. Nothing is argued to show that the reasons recorded in the letter dated 10th November 1982 are incorrect, or that the offending structure is authorised or warrants protection. The prayers in the suit pertain to the challenge to the impugned notice under Section 351 of the MMC Act and the letter dated 10th November 1982, on the ground that the structure existed prior to the datum line and was repaired only as per the repair permission.

30. I have recorded the reasons to confirm the findings of the trial court that no valid permission to carry out repairs has been proved by the plaintiff. The Apex Court in the decision of ***M/s. Sunbeam High Tech Developers Pvt. Ltd.*** has referred to the observation regarding the ad-interim protection granted in respect of the corporation's notice alleging unauthorised construction. The Apex Court has observed that any ad-interim orders that would protect the illegalities committed by the

plaintiff would not be sustainable. It is further observed that allowing the plaintiff to continue to enjoy the illegal action, including the unauthorised construction, would lower the courts' prestige and lower the law.

31. In the decision of this court in ***Tushar Guru Salien***, the learned Division Bench of this Court has observed that in the he suit challenging the allegation of unauthorised construction, there must be an averment of the sanction obtained from the corporation, and merely pointing out any deficiency in the notice would not have any bearing. It is further observed that such suits must contain a positive assertion made with reference to the sanction plan.

32. The Apex Court in ***Seema Arshad Zaheer*** has observed that merely showing the existence of certain structures would not be sufficient unless it is shown that a demolition order has been passed with regard to structures protected prior to the datum line. It is thus held that if the existence of the structure before the datum line is not established in respect of which the notice is issued, the challenge to the notice would have no effect on the unauthorised construction carried out by the occupant.

33. This court, in the decision of *Siesta Industrial and Trading Corporation and Others*, observed that the ground of repair permission would by itself not be conclusive proof that the structure existed prior to the datum line. It is further observed that any permission granted by the corporation for alteration or modification of the structure, though it may carry a presumption regarding the existence of such structure, does not conclusively establish that the structure in question existed prior to the datum line unless substantiated by supporting documents. In the present case, even as per the plaintiff, the old structure has been repaired, and during the repairs, the GI sheet walls were removed, and B.M. Walls were constructed. Thus, the question of protection on the ground that the structure existed prior to the datum line would not arise in the present case. In view of the findings that there is no valid repair permission for replacing the GI sheet walls with B.M. Walls, the offending structure is rightly accepted as unauthorised by the trial court. Therefore, the findings recorded by the trial court would not warrant any interference.

34. Hence for the reasons recorded above, the first appeal is dismissed. Pending civil applications are disposed of as infructuous.

35. Hence, for the reasons recorded above, the first appeal is dismissed. Pending civil applications are disposed of as infructuous.

36. At this stage, learned counsel for the appellant seeks extension of the interim protection. However, he is unable to point out whether any protection has been granted. Hence, no orders.

[GAURI GODSE, J.]