

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

FIRST APPEAL (STAMP) NO.21973 OF 2026
WITH
INTERIM APPLICATION NO.6173 OF 2026

Smt.Kshama Padmakar Shedge, Age 78 years,
R/o.Room no.2, Near Mahadev Sawant Chawl,
Agarwadi, Sion Trombay Road,
Near Municipal School, Mankhurd, Mumbai.

Appellant

versus

The Municipal Corporation of Greater Mumbai

Respondent

Mr.J.S.Jadhav i/by Mr.Bhlaprasad S.Shukla for Appellant.

Mr.Pradeep M.Patil for Respondent-BMC.

CORAM : AARTI SATHE, J.

DATE : 21st August 2026

ORAL JUDGMENT :-

1. Admit. The matter is taken up for hearing with the consent of parties.
2. The present First Appeal is filed by the Appellant (Original Plaintiff), who is in use, occupation, and possession of the suit premises since much prior to 1976. The First Appeal is filed against the judgment and decree dated 29th June 2026 (hereinafter referred to as “the impugned judgment and decree”) dismissing Long Cause (L.C.) Suit No.836 of 2021 passed by the Bombay City Civil Court (“Trial Court”), whereby the following order was passed: -

“ORDER

Suit stands dismissed with costs.”

3. Briefly, the facts are as follows: -

- (i) The suit premises i.e., Room No. 2 admeasuring 10x19 sq. ft. made

of B.M. wall and A.C. sheet roof, situated at CTS No. 121, Mahadev Sawant Chawl, Sion, Trombay Road, Near Municipal School, Mankhurd, Mumbai (hereinafter referred to as the “**suit premises**”) was constructed by the Appellant’s (Original Plaintiff’s) Husband;

(ii) It is the Appellant’s (Original Plaintiff’s) contention that she is residing in the said suit premises with her family members, and that the Rationing Authority had issued Ration card, and the Election Commission of India had issued the Election ID Card to the Appellant (Original Plaintiff) at the address of the suit premises;

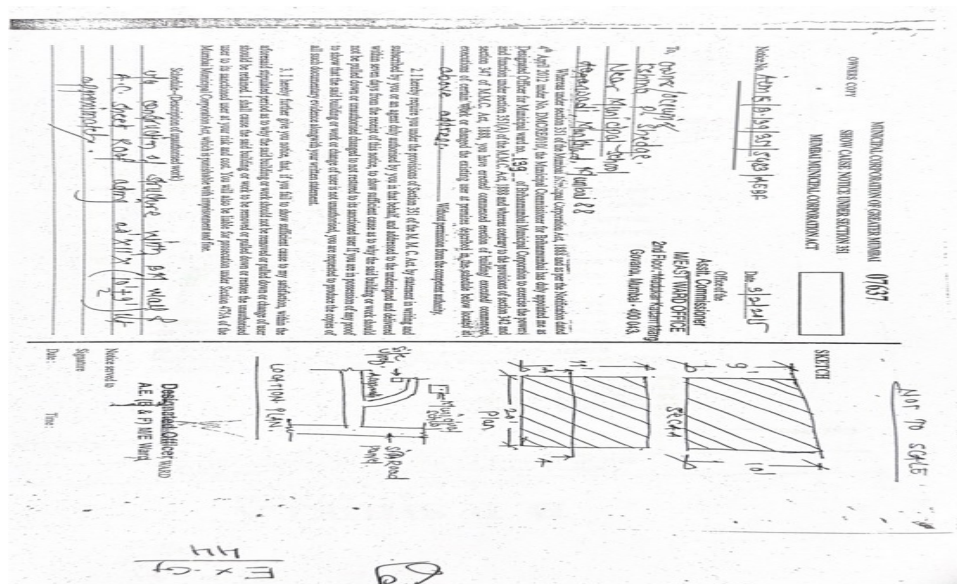
(iii) It is further the Appellant’s (Original Plaintiff’s) contention that the water connection was taken by all the neighbours jointly as a group connection in the name of Secretary Shri. Ravindra Ganpat Sawant, and that the Appellant (Original Plaintiff) is paying the necessary charges for the consumption of water;

(iv) In the year 2000, specifically on 22nd July 2000, census was carried out by the competent authority, and the application of Appellant (Original Plaintiff) was accepted for the issuance of photo pass and census receipt no. 0607222, pursuant to which census receipt was issued in favour of the Appellant (Original Plaintiff). The census receipt was issued in respect of the suit premises which qualified the datum line of 1st January 1995;

(v) On 19th April 2012, Junior Engineer, M/East Ward Office of the Respondent-Corporation issued a notice to the Appellant (Original Plaintiff) under Section 354-A of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as the “**MMC Act**”);

(vi) In 2012, the Appellant (Original Plaintiff) filed L.C. Suit No. 1083 of 2012 challenging the notice dated 19th April 2012. The said LC Suit No. 1083 of 2012 was decreed in favour of the Appellant (Original Plaintiff) by judgment and order dated 20th November 2014 passed by the Trial Court, with liberty being given to the Respondent-Corporation to initiate proceedings against the Appellant (Original Plaintiff) under Section 351 of the MMC Act;

(vii) On 3rd February 2015, a Designated Officer from M/East Ward Office of the Respondent-Corporation issued a notice bearing No. ACME/B-139/351/5483/AEBF under Section 351 of the MMC Act to the Appellant (Original Plaintiff), alleging that the suit premises was constructed unauthorizedly and contrary to the provisions of Sections 342 and 347 of the MMC Act, and directing the Appellant (Original Plaintiff) to produce documentary evidence pertaining to the suit premises within seven days of receipt of the said notice, failing which the suit premises would be demolished. The said notice specifically was issued in respect of the unauthorized construction which was described as follows: -



(viii) On 4th February 2015, the Appellant (Original Plaintiff) filed a reply to the notice dated 3rd February 2015 through her advocate, denying all the allegations made in the notice and submitted documentary evidence in support of her contentions that the suit premises was not unauthorized;

(ix) On 4th March 2021, despite no response from the Respondent-Corporation to the reply dated 4th February 2015, a Designated Officer from M/East Ward Office of the Respondent-Corporation came to the suit premises and served a notice under Section 488 of the MMC Act dated 3rd March 2021 to the Appellant (Original Plaintiff), seeking removal of the suit premises on 23rd March 2021 or any time thereafter;

(x) Post the aforesaid notices dated 3rd February 2015 and 3rd March 2021, the Appellant (Original Plaintiff) filed L.C. Suit No. 836 of 2021 praying for a declaration that the aforesaid notices be declared illegal and ultra vires to the MMC Act. The Appellant (Original Plaintiff) also prayed for a permanent order and injunction against the Respondent-Corporation from demolition of the suit premises;

(xi) On 29th June 2026, the L.C. Suit No. 836 of 2021 was dismissed by the Trial Court by passing the impugned judgment and decree of even date, on the ground that no single document on record proved that the Appellant (Original Plaintiff) had obtained permission to construct the suit premises from the competent authority under the MMC Act;

(xii) The Trial court in the impugned judgement and decree has placed reliance on the statement made by the Appellant (Original Plaintiff) in her cross

examination that while constructing the suit premises her father had not obtained sanction or approval from the Competent authority for construction. The Appellant (Original Plaintiff) also admitted that neither a notice was given under Section 527 of the MMC Act prior to the construction of the suit premises. The Trial Court further held that even though the Appellant (Original Plaintiff) was residing at the suit premises, there was not a single document on record to show that while constructing the same the Appellant (Original Plaintiff) or her father had obtained the sanction or approval from the Competent Authority of the Respondent-Corporation. The Trial Court further held that the documents on which the Appellant (Original Plaintiff) has sought to place reliance on i.e. Ration Card, electricity connection, election identity card etc., only go to indicate that the Appellant (Original Plaintiff) was residing in the suit premises and nowhere establish or prove that she had constructed the suit premises with the prior permission of the Competent Authority of the Respondent-Corporation. The Trial Court did not frame any issues as the Respondent-Corporation did not file a written statement. The Trial Court therefore held that the Respondent-Corporation had rightly issued notice under section 351 of the Act and hence refused to protect the suit premises from demolition.

4. Mr J.S. Yadav instructed by Mr. Bholaprasad S.Shukla appeared on behalf of the Appellant (Original Plaintiff). Mr. Pradeep M. Patil appeared on behalf of Respondent Corporation.

5. The primary contention of the learned counsel for the Appellant (Original Plaintiff) is that prior to taking action under Section 351 of MMC Act, the proper

procedure as envisaged in the said section has not been complied with by the Respondent-Corporation and therefore, the action of the Respondent-Corporation and the impugned judgment and decree upholding Section 351 proceedings, is bad in law and arbitrary. He submitted that the provisions of Section 351 of MMC Act stipulate that post issuance of notice, the Respondent-Corporation is under an obligation to afford a hearing to the Appellant (Original Plaintiff) and pass a reasoned order on the basis of reply/objections that the Appellant (Original Plaintiff) filed in response to the notice dated 3rd February 2015 issued under Section 351 of the MMC Act. In support of his aforesaid contention he sought to place reliance on the decision of the Division Bench of this Court in **Sopan Maruti Thopte & another Vs. Pune Municipal Corporation and another**¹, to contend that the said decision clearly mandates the procedure that needs to be followed by the Respondent-Corporation post issuance of Section 351 notice. He submitted that the directions as issued in **Sopan Maruti Thopte** (supra) have not been followed in the facts of the present case and hence the entire action of the Respondent-Corporation is rendered illegal. The directions in **Sopan Maruti Thopte** (supra) are reproduced below:-

19. Hence, on the basis of the law as discussed above, it is directed that after 1st May, 1996 the Bombay Municipal Corporation or the Municipal Corporations constituted under the B. P.M.C. Act would follow the following procedure before taking action u/s 351 of the B.M.C. Act or under S.260 of the B.P.M.C. Act.

(i) In every case where a notice u/s 351 of the B.M.C. Act/ under Sec. 260 of B.P.M.C. Act is issued to a party 15 days' time shall be given for submitting the reply. In case the party to whom notice is issued sends the reply with the documents, and shows cause, the Municipal Commissioner or Deputy Municipal Commissioner shall consider the reply and if no sufficient cause is shown, give short reasons for not accepting the contention of the affected party.

¹(1996)-AIR (Bombay)-304

(ii) It would be open to the Commissioner to demolish the offending structure 15 days after the order of the Commissioner/Deputy Municipal Commissioner is communicated to the affected person.

(iii) In case the staff of the Corporation detects the building which is in the process of being constructed and/or reconstructed and/ or extended without valid permission from the Corporation, it would be open to the Commissioner to demolish the same by giving a short notice of 24 hours after drawing a panchanama at the site and also by taking photographs of such structure and/or extension. The photographs should indicate the date when the same were taken.

(iv) In case where the Municipal Corporation has followed due process of law and demolished the unauthorised structure and or extension, if the same is reconstructed without valid permission within a period of one year, it would also be open to the Corporation to demolish the same by giving a short notice of 24 hours.

(v) If the offending structure and/or extension which is assessed by the Corporation for two years, notice shall provide for 15 days' time to show cause. If the Deputy Municipal Commissioner comes to the conclusion that he requires assistance of the party, he may give an oral hearing if he deems fit and proper before passing the order. It is made clear that oral hearing is not at all compulsory but it is at the discretion of the authority.

(vi) In any other case the Corporation is directed to issue a show cause notice in case of any structure and/or extension other than those mentioned in clauses (i) to (iv) above. The Corporation shall provide for 7 days' time to show cause in such a case.

(Emphasis supplied)

6. Learned counsel for Respondent-Corporation has fairly submitted that the Respondent-Corporation was indeed required to give a hearing and also a reasoned order in respect of the reply dated 4th February 2015 which was filed by the Appellant (Original Plaintiff) in response to the notice dated 3rd February 2015 under Section 351 of MMC Act. Today on instructions, learned counsel for the Respondent-Corporation submits that the Respondent-Corporation will give a hearing to the Appellant (Original Plaintiff) in respect of reply dated 4th February 2015 and any additional reply which the Appellant (Original Plaintiff) wishes to file along with documentary evidence in response to the aforesaid notice and pass a

reasoned order, and thereafter take appropriate action under Section 351 of MMC Act. He also submitted that the directions as given in **Sopan Maruti Thopte** (supra) in respect of proceedings under Section 351 of the MMC Act would be taken into consideration prior to passing the order.

7. For the purpose of ready reference, Section 351 of MMC Act is reproduced herebelow :

“351. Proceedings to be taken in respect of buildings or work commenced contrary to section 347.

1) The Commissioner shall, by notification in the Official Gazette, designate an officer of the Corporation to be the Designated Officer for the purposes of this section and of sections 352, 352A and 354A. The Designated Officer shall have jurisdiction over such local area as may be specified in the notification and different officers may be designated for different local areas.

(1A) If the erection of any building or the execution of any such work as is described in section 342, is commenced contrary to the provisions of section 342 or 347 the Designated Officer, unless he deems it necessary to take proceedings in respect of such building or work under section 354, shall-

(a) by written notice, require the person who is erecting such building or executing such work, or has erected such building or executed such work, or who is the owner for the time being of such building or work, within seven days from the date of service of such notice, by a statement in writing subscribed by him or by an agent duly authorized by him in that behalf and addressed to the Designated Officer, to show sufficient cause why such building or work shall not be removed, altered or pulled down; or

(b) shall require the said person on such day and at such time and place as shall be specified in such notice to attend personally, or by an agent duly authorized by him in that behalf, and show sufficient cause why such building or work shall not be removed, altered or pulled down.

Explanation. - "To show sufficient cause" in this sub-section shall mean to prove that the work mentioned in the said notice is carried out in accordance with the provisions of section 337 or 342 and section 347 of the Act.

(2) If such person shall fail to show sufficient cause, to the satisfaction of the Designated Officer, why such building or work shall not be removed, altered or pulled down, the Designated Officer may remove, alter or pull down the building or work and the expenses thereof shall be paid by the said person. In case of removal or pulling down of the building or the work by the Designated Officer, the debris of such building or work together with other building material, if any, at the sight of the construction, belonging to such person, shall be seized and disposed of in the prescribed manner and after deducting from the receipts of such

sale or disposal, the expenditure incurred for removal and sale of such debris and material, the surplus of the receipts shall be returned by the Designated Office

(3) No court shall stay the proceeding of any public notice including notice for eviction, demolition or removal from any land or property belonging to the State Government or the Corporation or any other local authority or any land which is required for any public project or civil amenities, without first giving the Commissioner a reasonable opportunity of representing in the matter.”

(Emphasis supplied)

8. Learned counsel for the Appellant (Original Plaintiff) does not have an objection to the suggestion of learned counsel for Respondent-Corporation and submitted that he will file additional reply over and above the reply dated 4th February 2015 before the Designated Officer of the Respondent-Corporation in reply to the notice dated 3rd February 2015 issued under Section 351 of the MMC Act.

9. In view of the aforesaid submissions, the First Appeal can be disposed of by passing the following order :

ORDER

(i) The Appellant (Original Plaintiff) to file additional reply with documents, if any, within seven days from today before the Designated Officer of the Respondent-Corporation ;

(ii) The Designated Officer of the Respondent-Corporation shall give a hearing to the Appellant (Original Plaintiff) and pass a reasoned order thereon within fifteen days from the receipt of additional reply of the Appellant (Original Plaintiff) considering the earlier reply dated 4th February 2015 and additional reply filed by the Appellant (Original Plaintiff);

(iii) In the event the reasoned order which would be passed by the Designated

Officer of the Respondent-Corporation is against the Appellant (Original Plaintiff), the same not to be acted upon by Designated Officer of the Respondent-Corporation for a period of two weeks from the date of passing such order;

(iv) The First Appeal is allowed in the aforesaid terms. Interim Application does not survive and stands disposed of. No order as to costs.

(AARTI SATHE, J.)