

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.855 OF 2015
ALONGWITH
CIVIL APPLICATION NO.1050 OF 2015

Hasmukh Kuwarji Shah	...	Appellant
Vs.		
The Bombay Municipal Corporation of Greater Mumbai (MCGM)	...	Respondent

P J Thorat, Adv. a/w. Devendra Sharma, Adv. for appellant.
A V Diwate, Adv. for respondent in BMC.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 17th October, 2015.

P.C. :

1. Rule. Made returnable forthwith.
2. The appellant has challenged the order of the Bombay City Civil Court dated 30th June, 2015 rejecting the appellant's Notice of Motion. The appellant's brother who was a handicapped person was given a license to put up a squatter stall on the footpath of link road near Esic Nagar, Andheri (W), Mumbai. The brother has expired. License would otherwise come to an end under the policy of the MMC. The license can be transferred in case of death of such squatter only to husband, widow and son. The handicapped person had no husband, widow or son. He was a bachelor. His license, therefore, cannot be transferred to any one. The appellant / plaintiff is his brother. He would not be entitled to the transfer of the license.
3. The squatter stall allowed to be put up was to be wooden made, movable, not embedded on the ground of 22' X 5' in dimensions and having 0.45 mtrs. Space below the stall from the

ground level for cleaning purpose. That height of the squatter stall should not be more than 2.25 mtrs. The stall which is shown to be in question today is not shown to be a wooden stall. Even if it is a wooden stall, it has tiles embedded thereon. It has ceased to be movable. It is shown to be embedded on the ground. There are various pillars which are embedded on the footpath. It is stated that the footpath was changed and paver blocks were installed. Hence the structure would have been moved when the paver blocks had to be installed. It should continue to be movable when moved back. It was required to be made 0.45 mtrs. above the ground. It is not so made.

4. The license has expired. It had to be renewed. It has not been renewed because of several objections. Hence on the date of the suit there has been no license. There is only a permanent structure which cannot be allowed to remain. There is no requirement of having any structure which does not confirm to the initial license. Hence the applicant has not made out any prima facie case for protection of the structure or for continuation or renewal of the license.

5. The order is correct. The appeal is dismissed.

6. Ad interim relief, if continuing, shall continue for two more weeks from today.

(ROSHAN DALVI, J.)