

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

**APPEAL FROM ORDER (ST) NO. 19154 OF 2015
WITH
CIVIL APPLICATION (ST) NO. 19156 OF 2015**

Mr. Raghunath Mahadeo Patil ... Appellant.

V/s.

Municipal Corporation of Greater Mumbai ... Respondent

Ms. Geeta Shastri with M. L. Verma for the appellant.
Mr. Amit Gharat for the intervenor.

**CORAM : K. K. TATED, J.
DATED : 21/07/2015.**

PC.:

. Heard learned Counsel for the parties.

2 This Appeal from Order is preferred by plaintiff challenging the order dated 14.07.2015 passed by Bombay City Civil Court, Mumbai in Notice of Motion no. 2504 of 2015 in L.C. Suit No. 1472 of 2015 declined to grant ad-interim relief.

3 Yesterday the matter was fully argued by the learned Counsel Mr. S.P. Srivastav. On his request, matter was kept today for further hearing. Today the learned counsel Ms. Shastri is appearing for the appellant.

4 In the present proceeding, the respondent corporation issued

notice under Section 354(A) of Mumbai Municipal Corporation Act, 1888 dated 26.06.2015 in respect of unauthorised constructions carried out by the plaintiff. The said notice was replied by the plaintiff through his Advocate on 27.06.2015. Thereafter, the plaintiff filed L.C. Suit No. 1472 of 2015 in Bombay City Civil Court, Mumbai for an order of injunction restraining the respondent corporation from taking any action pursuant to the notice under Section 354(A) dated 26.06.2015 without following due process of law.

5 It is the case of the plaintiff that plaintiff is owner, lawful occupant and using the alleged suit structure since 60-70 years for his own residence purpose. The plaintiff's case is that CTS No. 77, 77/1, 77/2 and 77/3 were allotted to him in exchange of old Gavthan site acquired for military by Indian Government in the year 1942. It is the case of the plaintiff that CTS No. 77 is the open land and there is no structure. In support of his contention, the learned counsel for the plaintiff relies on order dated 28.10.1942 issued by the Collector Bombay, Suburban District and also the property card and assessment order etc.

6 The learned counsel for the plaintiff submits that the suit structure was very old and was in dilapidate condition. Hence, plaintiff made application for repairs on 28.04.2015. It is the case of the plaintiff that notice issued by the Corporation is in respect of structure on CTS No. 77, whereas, the said structure is not on Survey no. 77, which is open land. On the basis of these submissions, the learned counsel for the plaintiff submits that this Hon'ble Court be pleased to

restrain the respondent Corporation from acting as per notice under Section 354(A) of the said Act without following due process of law.

7 I heard learned counsel for the appellant at length. In the present proceeding, the plaintiff filed application for repairs on 28.04.2015, in which it is specifically stated that plaintiff is residing in a house which is 60-70 years old. The ceiling of the said house of wooden, the same in dilapidate condition and same may collapse at anytime. Therefore, plaintiff may be allowed to carry out appropriate repairs. Whereas, on the spot, Corporation has noticed that plaintiff has made RCC construction of two storied building without obtaining prior permission from them.

8 At the time of argument, when this Court called upon the learned counsel for the plaintiff to show, whether they have taken any permission from the Corporation pursuant to their application for repairs dated 28.04.2015, the learned counsel for the plaintiff showed her inability to show the permission. This itself shows that plaintiff has carried out unauthorised construction without obtaining permission from the Corporation. These facts are considered by the Trial Court in paragraph 5 & 6 of the impugned order.

9 Considering the above mentioned facts and the reasons given by the Trial Court in the paragraph 5 and 6 of the impugned order, I do not find any reason to interfere at this stage in the present matter.

10 Hence, Appeal from Order stands rejected.

11 In view of rejection of Appeal from Order, nothing survives in Civil Application for stay. Hence, same stands rejected as infructuous.

(K.K.TATED, J.)