

mm

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

**APPEAL FROM ORDER NO. 992 OF 2015
WITH
CIVIL APPLICATION NO. 1218 OF 2015
IN
APPEAL FROM ORDER NO. 992 OF 2015**

Afred Sabestin Gonsalvis ...Applicant/Orig. Plaintiff
Vs.
The Mumbai Municipal Corpn.
Of Greater Bombay ...Respondents/Orig. Defendants

Mr. Mohit P. Jadhav for the Appellant
Mr. N.V. Walavalkar, Sr. Advocate a/w. Mr. A.V. Diwate for BMC

**CORAM : MRS. ROSHAN DALVI, J.
DATED : 11TH SEPTEMBER, 2015**

P.C. :

Rule. Returnable forthwith.

1. The appellant has challenged the impugned order dated 16th July, 2015 rejecting the appellant's notice of motion. The appellant claims that his structure has been in existence prior to 1976 and has been cessed and hence cannot be demolished.
2. The demolition has been carried out pursuant to the notice issued under Section 354A of the MMC Act dated 2nd April, 2012 for erection of a gala with wooden bamboos

vertically and horizontally covered with tin patra with intention to create a gala at that site. The structure was, therefore, most temporary. The appellant sent his reply dated 3rd April, 2012 which was considered and an order came to be passed ultimately after hearing the appellant on 19th July, 2014 showing that the appellant had failed to produce documentary evidence or any permission issued by the competent authority of the MMC and hence the structure was unauthorised.

3. The appellant has not produced any document showing any permission of any competent authority even today. The appellant has tendered a letter dated 13th December 1980 of the Controller of Slums in the name of the appellant relating to a census certificate structure No. NXC/851/1 stated therein under application dated 10th November, 1980 shown to have been made by the appellant. The appellant has tendered a photocopy of an application. It is not dated 10th November, 1980. It bears the date 22nd August, 1976. Hence the appellant's claim that his structure has been cessed from 1976 is wholly incorrect. Counsel on behalf of the appellant has tried to show that the particulars are the same. However the date is different.
4. The fact remains that the appellant has not produced the census card or the patch holders' card itself. The cess, if

any, paid by the appellant is not shown.

5. The appellant has relied upon a letter of the Tahasildar showing that the office has no objection to grant a licence for a structure in a slum on government lands at CTS No. 185. The letter is itself not a licence. It is only a letter showing that there is no objection for granting licence. The licence itself is not produced.
6. The appellant has produced photographs of the suit structure as directed by the Court. The structure shows patra sheets with tarpaulin roof. Such cannot be the structure which would have remained in existence for 39 years.
7. Counsel on behalf of the MMC states that the appellant's structure has been demolished. The structure under notice itself was one which was temporary. Hence this statement stands to reason.
8. Consequently it is seen that the impugned order is correct. The structure cannot be protected. The notice of motion is rightly rejected. The appeal itself is rejected. The civil application is also rejected.
9. The appellant has produced 2 photographs of the structure. One photograph signed by the Advocate of the

appellant is taken on record and one photograph signed by the Advocate of the appellant is handed over to the Counsel on behalf of the MMC.

10. The interim order passed on 4th August, 2015 extended on 10th August 2015 and 3rd September 2015 shall continue for 2 weeks from today.
11. Appeal and Application are disposed of accordingly.

(ROSHAN DALVI, J.)

CERTIFICATE

**Certified to be true and correct copy of the original signed
Judgment /order.**