

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST.) NO.25267 OF 2015
ALONGWITH
CIVIL APPLICATION (ST.) NO.25268 OF 2015

Ashok Ghadi & Anr.	...	Appellants
Vs.		
The Municipal Corp. of Gr. Mumbai	...	Respondents

Mahendra Shingade, Adv. i/b. Avinash H Fatangare, Adv. for appellants.

A V Diwate, Adv. for respondent M C G M.

CORAM : MRS. ROSHAN DALVI, J.

DATE : 15th September, 2015.

P.C. :

1. Rule. Returnable forthwith.
2. The appellants who are the original plaintiffs have challenged the order of the Bombay City Civil Court rejecting their Notice of Motion which challenged the notice issued under Section 351 of the MMC Act. The notice shows unauthorised construction of a structure of BM wall and AC sheet roof shown in the sketch plan. The sketch plan shows the plaintiffs' structure along side the road. The plaintiffs have produced the documents from and after 1980. The documents do not show specifically the structure under the notice. One bill of a society shows shop No.489. The plaintiffs should link shop No.489 with the suit structure. That is not done. One hospital record shows some birth in 1986. The address is of Chikuwadi. Where is it in Chikuwadi and which is the structure in which the birth took place is not shown.

3. The ration card of the plaintiffs is at Anushakti Nagar, Chikuwadi. The Ration card is issued in the year 1993 and extended in 2000. It does not show the suit structure from 1962 as required. Three applications for election card are shown regarding the plaintiff and his family members. The election card of the plaintiff No.1 is not shown. The election card of plaintiff No.2 is issued on 1st September, 1995 and the reverse of it carries the date 15th November, 1995.

4. An agreement in the name of plaintiff No.2 taking the premises at Chikuwadi is shown to be on 25th June, 1997. If the plaintiff executed agreement in 1997 it is not understood how the plaintiff got ration card even prior thereto of 1993 or the election card of 1995.

5. The shop and establishment license is issued on 5th December, 2001. One telephone bill is of March, 2012. The documents do not show the authorisation or toleration of the suit structure.

6. The agreement is not in respect of the premises shown in the ration card or election card. The plaintiffs' structure may have been in existence at the time of the filing of the suit, but it is not shown to be existence as required.

7. The defendants have issued the notice and considered the plaintiffs reply and passed the order after due legal process is followed. The plaintiffs have not made out any prima facie case. Notice of Motion is correctly rejected.

8. The Appeal from Order is dismissed. Civil Application is also disposed of accordingly.

(ROSHAN DALVI, J.)

C E R T I F I C A T E

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