

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER (ST.) NO. 30422 OF 2015****ALONGWITH****CIVIL APPLICATION (ST) NO. 30424 OF 2015****IN****APPEAL FROM ORDER NO. 30422 OF 2015****Amrish Rasiklal Shah****..... Appellant
(Ori. Plaintiff)****VERSUS****Mumbai Municipal Corporation of Greater
Mumbai****..... Respondents
(Ori. Defnts)**

Mr.Sanjiv Sawant for the Appellant.

Ms.M.R.Bhoir, a/w. Mr.R.K.Sonawane for the Respondents – BMC.

CORAM : R.D. DHANUKA, J.**DATED : 17th NOVEMBER, 2015****P.C.**

By this appeal from the order, the appellant seeks to impugn the order dated 5th October, 2015 passed by the learned trial Judge dismissing the notice of motion filed by the appellant inter alia praying for injunction of the notice issued by the Municipal Corporation under section 351 of the Municipal Corporation Act.

2. Mr.Sawant, learned counsel appearing for the appellant submits that the respondents had issued a similar notice under section 351 to the appellant on 23rd April, 2004 in respect of the same structure which was subsequently withdrawn by the Municipal Corporation. He submits that the Corporation issued a fresh notice on 18th October, 2012 under section 351 of the Mumbai Corporation Act again in

respect of the same structure. He submits that the learned trial Judge did not consider all the documents produced by the appellant before dismissing the notice of motion filed by the appellant.

3. Learned counsel appearing for the Municipal Corporation invited my attention to the two notices issued by the Municipal Corporation i.e. on 23rd April, 2004 and also a notice dated 18th October, 2012 and would submit that both these notices are for different unauthorized construction. She submits that even the nature of the structure carried out by the appellant as reflected in both the notices are different. She submits that even if the first notice is withdrawn by the Municipal Corporation which was for different unauthorized construction, the appellant cannot get protection in respect of the unauthorized construction carried out subsequently after withdrawal of the said notice which was the subject matter of the notice dated 18th October, 2012. My attention is also invited to the impugned order passed by the learned trial Judge rejecting the notice of motion.

4. A perusal of the two notices issued by the Municipal Corporation prima facie indicates that both the notices are for different types of construction carried out by the appellant. In my view the notice dated 18th October, 2012 is clearly not for the same cause of action which was subject matter of the earlier notice dated 23rd April, 2004. Even the nature of the construction carried out as can be compared in both the notices are different.

5. A perusal of the impugned order passed by the learned trial Judge clearly indicates that the only document produced by the appellant was a repair permission of 1979 issued by MHADA. The appellant had produced a map of 1979. The learned trial Judge has considered the said document and has in my

view rightly come to the conclusion that the said document was not sufficient to prove that the said structure was in existence prior to 1964. The appellant did not produce any sanction plan of the said structure in support of contention that the said construction was constructed after obtaining sanction from the Municipal Corporation or did not produce any document to show that the said construction was in existence on the datum line.

6. The learned trial Judge has passed a reasoned order and has rightly rejected the notice of motion. The appeal is devoid of merits. Appeal is accordingly dismissed.

7. In view of the disposal of the appeal from order, civil application does not survive and is accordingly disposed of.

8. Interim protection granted by the trial court on 9th November, 2012 to continue for a period of eight weeks from today.

[R.D. DHANUKA, J.]