

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

**APPEAL FROM ORDER NO.206 OF 2015
ALONGWITH
CIVIL APPLICATION NO.266 OF 2015**

Mr. Prabhu Devandas Chauhan

.. Appellant/Applicant

Versus

**The Municipal Corporation of Greater Mumbai
and others**

.. Respondents

Mr. Jamshed Ansari for the Appellant/Applicant.

Mrs. Madhuri More for the Respondents.

CORAM : R.M. SAVANT, J.

DATE : 20th JULY 2016

PC.

1 The above Appeal from Order takes exception to the order dated 03.02.2015 passed by the Learned Judge of the City Civil Court, Borivali Division, Dindoshi, Mumbai. By the said order, ad-interim reliefs came to be refused to the Appellant/original Plaintiff. The Appellant who is the original Plaintiff was served with a notice under Section 351 of the Mumbai Municipal Corporation Act (For short "MMC Act") alleging that he has carried out unauthorized construction of rooms with brick masonry walls admeasuring 3.00 m X 2.90 m having average height of 1.9 + 2.15 mtrs. on survey No.18, CTS No.1184 known as Savitri Niwas Chawl, near

Y. B. Chavan School, Opp. Wanja wadi hall, Mathuradas Road, Mumbai-400 067. The said notice came to be replied to on behalf of the Plaintiff vide reply dated 03.01.2015. It was the case of the Applicant in the said reply that the plot of land on which the structure was situated was owned by one Mr. Harishankar Anand Raj Kandivalikar and that he had given a portion of the suit plot of land admeasuring about 20 fts. and 30 fts. (about 600 sq.fts.) to one Mr. Shamsuddin Abdul Kadar Shaikh on monthly rent of Rs.150/-. The said Mr. Shamsuddin was using the said plot of land for running his Garage in the name and style of M/s. Royal Garage. It was the case of the Plaintiff in the said reply that the said Mr. Shamsuddin surrendered his right, title and interest in the said plot of land admeasuring about 600 sq.fts. together with standing structure thereon to the landlord on or about 28.10.2004. It seems that in the interregnum the ownership of the said property changed from the said Mr. Harishankar Kandivalikar to M/s. Gurukripa Enterprises vide deed of conveyance dated 16.05.2008 executed by the said Mr. Harishankar Kandivalikar. It is the case of the Plaintiff that it approached the said new landlord for tenancy being granted. Pursuant to which, tenancy agreement came to be executed in favour of the Plaintiff in respect of the land admeasuring 600 sq.ft. as well as structure thereon. It is the case of the Plaintiff that since then the Plaintiff is in occupation of the suit structure.

The designated officer of the Municipal Corporation considered the said reply and confirmed the notice vide his order dated 15.01.2015 and directed the Plaintiff to remove the structure within 15 days of the receipt of the said order. The notice in question dated 12.12.2014 and the resultant order dated 15.01.2015 passed thereon resulted in the Plaintiff filing the suit in question being LC Suit No.278 of 2015. In the said suit, a declaration is sought in respect of the notice as well as the order passed by the designated officer. It is in the said suit that the Plaintiff filed the instant Notice of Motion for an injunction restraining the MCGM from implementing the said notice and demolishing the Plaintiff's structure. In support of his case that the structure is in existence prior to the cut of date i.e. 01.02.1962 the Plaintiff inter-alia relied upon various documents amongst which is the purported letter dated 05.01.1960 issued by Mr. Harishankar Kandivalikar in favour of Mr. Shamsuddin agreeing to create a tenancy in his favour. The agreement dated 24.08.1977 between Mr. Harishankar and Mr. Shamsuddin, the rent receipt dated 01.08.1960 purportedly issued by Mr. Harishankar in favour of Mr. Shamsuddin, inspection report dated 15.11.1980 and 12.10.1983, the receipt issued by the Assessor and Collector of the MCGM dated 14.12.1984, receipt dated 15.03.1985, receipt dated 03.08.1984, receipt dated 12.09.1986 and other documents. The Trial Court considered the said application for ad-interim

reliefs and has by the impugned order dated 03.02.2015 refused to grant ad-interim relief. The Trial Court has recorded a finding that the documents have been produced on record are not pertaining to the suit premises and are in respect of one shed. The Trial Court has further observed that the dimensions of the structure which have been mentioned in the said document do not match with the dimensions mentioned in the notice and therefore the said documents could not be relied upon as proof of the existence of the structure prior to the datum line 01.02.1962. The Trial Court has also observed that the inspection reports placed on record by the MCGM also reflect a structure of different dimensions.

2 The Learned Counsel appearing on behalf of the Appellant Mr. Jamshed Ansari would seek to draw this Court's attention to the said documents. The Learned Counsel would indicate that the said documents demonstrate that the structure is in existence since long past. In so far as the allegedly letter executed on 05.01.1960 is concerned, a bare perusal of the letter would indicate that the said letter is a bogus document. Though the date at the top of the said letter is mentioned as 05.01.1960, below the alleged signature of the landlord the date mentioned is 05.01.1990. Even giving allowance for some mistake in writing the date, what gives away the said document is that after the address a pin-code has been mentioned in the letter. It is pertinent to note that the pin-code system was

not existence in the year 1960 and came into existence much later in the year 1972 or thereabouts. Hence, obviously the said document is a got up document to somehow justify the existence of the structure prior to the cut of date i.e. datum line which is 01.02.1962. In view of the fact that the basic document i.e. letter dated 05.01.1960 does not inspire confidence. The other documents i.e. namely the rent receipts etc. allegedly executed by the landlord in favour of one of the predecessors of the Plaintiff also do not inspire confidence. In so far as the other documents are concerned, they are not prior to the cut of date i.e. 01.02.1962 and are of much later years i.e. of the year 1980-1983 and thereafter. The said documents do not justify the existence of the structure prior to the cut of date for it being treated as a tolerated structure. It is also pertinent to note that the Plaintiff has not produced a single document to show that the shed which has been mentioned in the document produced by him was allowed to be converted to the structure having brick masonry walls. There is no document of the MCGM levying assessment in respect of the structure during the period 1960-1970. The Trial Court has rightly recorded a finding that the dimensions of the structure also vary, as also the nature of the structure as mentioned in the notice and as mentioned in the documents produced by the Plaintiff. The impugned order passed by the Trial Court cannot be faulted with. In my view, having regard to the aforesaid facts, discretion

cannot be exercised in favour of the Plaintiff. There is therefore no merit in the above Appeal from Order which is accordingly dismissed.

3 In view of the dismissal of the above Appeal from Order, the Civil Application does not survive and to accordingly stand disposed of as such.

4 At this stage, the Learned Counsel for the Appellant/Applicant prays for stay of the instant order for a period of four weeks for the Appellant/Applicant to consider applying for regularisation to the MCGM. In the facts and circumstances of the case, operation of the instant order is stayed for a period of four weeks from date.

[R.M. SAVANT, J]