

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal from Order NO. 306 of 2015
with
Civil Application No.379 of 2015

Mr. Madanlal Shivnath Ram Fulwaria ...Appellant

Versus

The Municipal Corporation Of Greater
Mumbai

...Respondent

Mr.S.K.Dubey, for the Appellant.

Ms.Madhuri More, for the Respondent-M.C.G.M.

CORAM : G.S. KULKARNI, J.

DATE : 21 NOVEMBER 2016.

PC. :

1. Heard Mr.Dubey, learned Counsel appearing for the Appellant and Ms.Madhuri More, learned Counsel appearing for the Respondent-Municipal Corporation.
2. This appeal is directed against an order dated 12 February 2015 passed by the learned Trial Judge whereby Notice of Motion No.645 of 2015 in L.C.Suit no.328 of 2015 taken out by the Appellant was dismissed. The Appellant had filed the suit in question challenging the action on the part of the Corporation issuing a notice under Section 351 of the Mumbai Municipal Corporation Act,1888 as regards the unauthorised construction of ground (commercial) plus first floor (Residential)

structure using brick masonry wall and ladi coba and A.C.sheet roofing admeasuring 28 ft X 20 ft and height 26 ft. approximately, as specifically set out in the notice. The Appellant had replied to the said notice. By an order dated 28 January 2015, the designated officer of the Municipal Corporation held that the Appellant has not submitted any documentary evidence showing the authenticity of the structure and further there is no document showing existence of noticed structure prior to 1 April 1964 for the residential structure to be regularised as tolerated. The designated officer has accordingly directed the Appellant to demolish/pull down the noticed structure within seven days. The learned Trial Judge considering the documents on record has rejected the prayer of the stay on the action of the Municipal Corporation.

3. When this Appeal was heard for some time on 18 February 2015, this court had observed in the order that the learned Counsel for the Appellant would take instructions from his client as to whether his client is ready and willing to make appropriate application before the Corporation for regularisation of the suit structure. It appears that though the matter appeared but it remained pending admission.

4. Today Mr.Dubey, learned Counsel for the Appellant submits that the Appellant is willing to make an application to the Municipal Corporation for regularisation of the unauthorised structure as

complained in Section 351 notice dated 3 January 2015. He submits that the Applicant would submit an application within a period of four weeks from today only to the appropriate department/officer of the Respondent-Corporation. If such an application is made within the said period, the Municipal Corporation shall consider the same on its own merit and in accordance with law and decide the same within a period of four weeks thereafter. All the contentions of the parties in that regard are expressly kept open.

5. In the aforesaid situation it is in the interest of justice that the ad-interim protection which is granted by this court shall continue to operate for a period of eight weeks from today. If the Appellant does not apply for regularisation to the appropriate officer within a period of four week from today, needless to observe that this protection shall not be available. The Appeal from order is therefore allowed to be withdrawn in view of the above submissions as made on behalf of the Appellant. The Appeal is accordingly disposed of as withdrawn. No costs.

6. Civil Application No.379 of 2015 does not survive. It is accordingly disposed of.

Parties to act on the authenticated copy of this order.

(G.S.KULKARNI, J.)