

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

***CIVIL APPLICATION (ST) NO. 7339 OF 2016
IN
APPEAL FROM ORDER (ST) NO. 7337 of 2016***

Mr.Anil Ramesh Parerao

... Applicant

v/s

Municipal Corpn. of Gr. Mumbai & ors.

... Respondents

Mr.Kunal Tiwari i/by K. Juris for the applicant.

Mr.A.V.Diwate for the respondent Corporation.

CORAM: N.M. JAMDAR, J.

DATED : 21 MARCH 2016

P.C.:

The appeal challenges the order passed by the City Civil Court, Mumbai, dated 4 March 2016, refusing to grant ad-interim relief and adjourning the hearing of notice of motion to 28 March 2016.

2 In the suit, the Appellant challenged the notice under Section 55(1) of Maharashtra Regional Town Planning Act, 1966 in respect of construction of structure using MS angle, steel pipes, tin sheets, admeasuring 31' 5" x 12' 8" with height of 9'.

3 Before instituting a suit, the Appellant replied to the notice

stating that the structure does not belong to the Appellant and it is far away from the room premises of the flat. In the said reply, in other place, the Appellant has stated that it does not belong to the Appellant and he has not carried out any unauthorized structure and the same premises has been acquired from the original tenants. The Municipal Corporation did not accept the explanation of the Appellant. Hence the suit was filed.

4 Heard learned counsel for the parties.

5 Learned counsel for the Appellant submitted that the structure belongs to the landlord and it is the landlord who must justify its legality. He submitted that the structure was let out to the Appellant and the Appellant does not have any document to show its legality. He submitted that the structure is in possession for a long period of time.

6 Firstly, in reply, the Appellant has taken a stand that the structure is far away from the room premises. Thereafter he has stated that it is given to him by the original tenant. Both these stands are contradictory. Learned counsel for the Corporation has drawn my attention to the tenancy agreement which only refers to a room admeasuring 120 sq. ft. It does not refer to the structure in question. No other document showing that the structure was given to the Appellant by the landlord or the original tenant, has been placed on record. In absence of any document placed on record showing that the structure is legal, the decision taken by the City

Civil Court, cannot be interfered with.

7 The scope of challenges to such notices of the Municipal Corporation in a civil suit, is extremely limited.

8 Considering this position, there is no merit in this appeal. The appeal is accordingly dismissed.

9 In view of dismissal of the appeal, the civil application does not survive and is dismissed.

(N. M. JAMDAR, J.)