

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

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**APPEAL FROM ORDER (STAMP) NO. 11606 OF 2016
WITH
CIVIL APPLICATION (STAMP) NO. 11610 OF 2016
IN
APPEAL FROM ORDER (STAMP) NO. 11606 OF 2016**

Haider Masoom Haider Sayyad ...Appellant

Versus

The Municipal Corporation of Gr. ...Respondent
Mumbai

**WITH
APPEAL FROM ORDER (STAMP) NO. 11619 OF 2016
WITH
CIVIL APPLICATION (STAMP) NO. 11621 OF 2016
IN
APPEAL FROM ORDER (STAMP) NO. 11619 OF 2016**

Sayyad Mazhar Abbas & Anr. ...Appellants

Versus

The Municipal Corporation of Gr. ...Respondent
Mumbai

**WITH
APPEAL FROM ORDER (STAMP) NO. 11624 OF 2016
WITH
CIVIL APPLICATION (STAMP) NO. 11625 OF 2016
IN
APPEAL FROM ORDER (STAMP) NO. 11624 OF 2016**

Jubair Ahmed Abraham Shaikh ...Appellant

Versus

The Municipal Corporation of Gr. ...Respondent
Mumbai

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Mr. B. S. Shukla for the Appellant.
Mr. A. V. Diwate for the Respondent-BMC.

CORAM : G. S. KULKARNI, J.
DATE : 21st APRIL, 2016.

P. C. :

1. Not on board. Taken on board.
2. By consent of the parties these appeals are heard finally.

The appellants in these appeals challenge the order dated 19.03.2016 passed by the learned Judge, City Civil Court at Bombay whereby Notice of Motion No. 277 of 2014 filed on behalf of the appellants/plaintiffs in L. C. Suit No.145 of 2014 is rejected by a reasoned order. The challenge in the suit as also the relief as sought in the Notices of Motion was to a notice issued by the Municipal Corporation dated 24.12.2013 under Section 55 of the MRTP Act in regard to the suit structures. According to the Corporation the suit structure which was on the Corporation land was unauthorized and illegal. The Corporation had accordingly issued a notice dated 16.12.2013 under Section 354-A of the MMC Act, 1888. Thereafter on 24.12.2013 a notice under Section 55 of the MRTP Act came to be issued inter alia recording that the appellants/plaintiffs have carried

out development of a temporary structure unauthorizedly without taking any permission from the Municipal Corporation as required under law. According to the appellants this notice was replied by a letter of the Advocate for the appellants dated 06.01.2014 which is at page 71 of the paper book. Certain documents namely Ration Card (Old & New), Election Roll, Election Identity Card, Census Receipt dated 31.07.2000 etc. were submitted to the Municipal Corporation to contend that this structure is a protected structure. The Municipal Corporation after taking into consideration all these documents issued a communication dated 09.01.2014 informing the appellants/plaintiffs that these documents submitted by the appellants do not prove that the structure is a tolerated structure and/or a structure prior to the datum line of 1964. The appellants/plaintiffs were called upon to remove the structure, failing which it would be removed at the hands of the Corporation.

3. Being aggrieved by this communication and the proposed action that could be taken on behalf of the Municipal Corporation, the appellants approached the City Civil Court in the captioned suit. By the impugned order in these appeals, the Notices of Motion have been rejected. The learned Judge, after appreciating the rival contention and after taking into consideration all the documents

which are placed on record of the suit, has recorded a finding that none of the documents would assist the appellants/plaintiffs to contend that the structure need not be demolished.

4. The learned counsel for the appellants in assailing this finding as made in its impugned order makes a grievance that the Corporation ought to have considered the documents and more particularly the Ration Card which is of the year 1984. He submits that the appellants would be satisfied if the appellants are relegated to the Competent Authority of the Municipal Corporation to reconsider these documents. He submits that if the appellants are so permitted, the appellants would not press this appeal and would also unconditionally withdraw the suits in question which are pending before the Trial Court.

5. Taking into consideration the facts of the case, the request as made on behalf of the appellants does not appear to be so unjustified. There are findings of fact which are recorded in the impugned order which the appellants are not so successful in assailing. Nonetheless the appellants are willing to take a further chance in order to have a second opportunity/chance before the Municipal Corporation.

6. In view of the above submission the appellant is permitted

to approach to the Competent Authority of Municipal Corporation by submitting fresh material which the appellant desires to submit. The appellants would approach the Competent Authority with relevant documents within two weeks from today. The Competent Authority would consider these documents and pass a fresh order within two weeks thereafter.

7. Till the Competent Authority of the Municipal Corporation would decide the issue afresh on the said material to be submitted on behalf of the appellants, the Corporation will not take any coercive action in regard to the suit structure till the communication of the said order in that regard to the appellant. Needless to observe that if the appellant fails to submit any fresh material within a period of two weeks, the Municipal Corporation shall be at liberty to take appropriate action in regard to the suit structure as permissible in law.

8. It is clarified that in passing the present order the findings which are recorded in the impugned order passed by the Trial Court in no manner would stand disturbed.

9. In the above circumstances the appellants pray for withdrawal of L. C. Suit No.145 of 2014 which is allowed to be withdrawn.

10. The Appeals from Order are also allowed to be withdrawn and disposed of as withdrawn. No order as to costs.

11. The Civil Applications also do not survive and the same are disposed of.

12. A copy of this order be forwarded to the Registrar of the City Civil Court to be placed on the record of L. C. Civil Suit No. 145 of 2014.

(G. S. KULKARNI, J.)