

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

**FIRST APPEAL NO. 535 OF 2014
WITH
CIVIL APPLICATION NO. 1779 OF 2014**

Smt. Bharatiben Pankajkumar Nayani & ors. ...Appellants

vs.

Municipal Corporation of Gr. Mumbai & anr. ...Respondents

Mr. P. J. Thorat a/w Ms. Pratibha Shelke, Advocate for the appellants.

Mrs. M. R. Bhoir, Advocate for respondent no.1/BMC.

Mr. Sandeep Mahadik i/by Mr. Manoj Upadhyay, Advocate for respondent no.2.

Coram : Smt. R. P. SondurBaldota, J.

Date : 15th April, 2016.

P.C.

1. The appellants herein are the unfortunate litigants on whom the present litigation has been thrust upon, by the dishonesty of the predecessor in title of respondent no.1. They were inducted as tenants in the premises of their respective occupation by keeping them in dark about the notice issued by respondent no.1 Mumbai Municipal Corporation under Section 357 of the Mumbai Municipal Corporation Act, ("M.M.C. Act", for short) in the year 1995. After their induction in the premises the landlord sold

the property to respondent no.2, the present owner. Earlier the notices had been challenged by the erstwhile owner but after sale of the property the proceedings remained unattended and finally got dismissed. Thereafter while the appellants were in possession, respondent no.2 issued notices under Section 488 of M.M.C Act. The appellants challenged the notices by filing L. C. Suit No. 283 of 2007. The Bombay City Civil Court dismissed the suit by the judgment and decree impugned in the present appeal.

2. The appellants being the tenants in respect of the unauthorized structures could produce no evidence whatsoever of the authorization of the structures. The further action of notice under Section 488 of the M.M.C. Act was initiated by the respondent no.1 Corporation on the complaint of respondent no.2. In this circumstances, Mr. Thorat, the learned advocate for the appellants on instructions from the appellants makes a statement that the appellants shall vacate the premises in their respective occupation so that respondent no.1 can demolish the same in implementation of the notice. He tenders undertakings of the appellants to that effect. The undertakings are taken on record and accepted. Since the structures are unauthorized obviously respondent no.2 as the owner cannot claim possession thereof after the appellants vacate the same. Since all the appellants may

not vacate their respective premises on the same day, it is directed that as and when the appellants vacate the respective premises they shall deposit the keys of the premises with Assistant Commissioner (P) North Ward, Mumbai Municipal Corporation. Respondent no.1 – Corporation shall complete the action of demolition within two weeks after receiving the keys from the appellants. With this order the first appeal is disposed off.

3. In view of the disposal of the first appeal, Civil Application No. 1779 of 2014 does not survive. The same is accordingly disposed off.

[Smt. R. P. SondurBaldota, J.]