

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

**FIRST APPEAL NO.124 OF 2014
ALONG WITH
CIVIL APPLICATION NO.2050 OF 2012**

**Hashmi Mohamed Yunus Baba : Appellant/Applicant
versus
Municipal Corporation of Greater Bombay : Respondent**

**Mr. A A Desai for the Appellant/Applicant.
Mrs. M R Bhoir for the Respondent.**

**CORAM : R. M. SAVANT, J.
DATE : 09th August 2016**

ORAL ORDER

1 Admit. Considering the challenge raised heard forthwith.

2 The above First Appeal takes exception to the judgment and order dated 18/02/2012 passed by the learned Judge, City Civil Court, Greater Bombay by which order the suit in question being L.C. Suit No.2758 of 2009 came to be dismissed.

3 The facts giving rise to the filing of the above First Appeal can in brief be stated thus :-

The Appellant herein is the original Plaintiff who was served with the notice issued under Section 314 read with Section 394 of the Mumbai Municipal Corporation Act, 1888 (for short "the said Act"). It was alleged in

the said notice that the Appellant had covered open drain for keeping material by constructing a structure. It was alleged that the same was in violation of Section 313(1)(a) of the said Act.

4 In reply to the said notice it seems that the Appellant had made a representation to the Competent Authority i.e. Assistant Commissioner M-East Ward, Mumbai and in support of his case that his structure was in existence since 01/01/1990, the Appellant/Plaintiff relied upon a host of documents which are reflected in the order dated 03/12/2009 passed by the Assistant Commissioner, M-East Ward, Mumbai. The Assistant Commissioner considered the said documents and in respect of some documents held that they did not prove the existence of the structure prior to 01/01/1990, and in respect of some documents, the Assistant Commissioner held that the said documents are not relating to the notice structure.

5 The Appellant aggrieved by the said notice dated 30/12/2008 as also the order dated 03/12/2009 passed by the Assistant Commissioner, filed the instant Suit for a declaration that the notice and the order passed by the Assistant Commissioner were illegal etc. The Municipal Corporation for Greater Mumbai (for short "MCGM") filed its written statement wherein it contended that on a site visit it was found that the suit structure was constructed unauthorizedly on the Sonapur Govandi Road where the project of

road widening was in progress. It was further contended in the Written Statement that the documents relied upon by the Plaintiffs were not sufficient to prove the authorization of the structure.

6 On the basis of the pleadings of the parties the following issues were framed by the Trial Court.

Issues	Findings.
1] Does the Plaintiff prove that structure on the suit premises is authorized and justified ?	Negative
2] Does he prove that the impugned Notice dated 30/12/2008 u/s.314 of BMC Act & letter dated 03/12/2009 are illegal & bad-in-law?	Negative
3] Is the suit maintainable without notice u/s 527 of MMC Act?	Affirmative
4] Is the Plaintiff entitled to the reliefs claimed?	Negative
5] What order & Decree ?	As per final order?

7 In support of his case the Plaintiff examined himself and relied upon the following documents :-

Ex.9	Census slip in original
Ex.10	Electric bill in original
Ex.11	Election identity Card in original
Ex.12	Letter of 1991 issued by the MHADA in original
Ex.13	Medical certificate issued by Naseoh's Mrs. Gulestan Billimoria and Dr. R B Billimoria Dept. of Prevention in original.

Ex.14	Shop and Establishment Registration Certificate in original
Ex.15 (Colly)	Three receipts issued by the BMC in original
Ex.16	Letter dated 19/03/2001 issued by the Additional Collector (N.A.) Kurla-III in original.
Ex.17	Notice u/s. 314 of the BMC Act dated 30/12/2008 in original.
Ex.18	Order dated 3/12/2009 passed by the Assistant Commissioner in original.

8 On behalf of the MCGM the evidence of its officer Mr. Bipin A Jadhav was adduced.

9 On the basis of the material which had come on record the Trial Court inter alia reached a conclusion that the documents on which the Plaintiff relied upon are not relating to the suit structure and that they do not prove the existence of the suit structure prior to 01/01/1995, and as indicated above has dismissed the suit in question by the impugned judgment and order dated 18/02/2012.

10 The learned counsel appearing on behalf of the Appellant Shri A A Desai would initially seek to contend that a wrong provision of the Mumbai Municipal Corporation Act has been invoked in issuance of the notice under Section 314 of the said Act. However, upon being pointed out that the provision that is mentioned is Section 313(1)(a) and not 313A of the said Act, the learned counsel for the Appellant did not carry the said point further. The learned counsel for the Appellant would contend that in the notice the case of

the MCGM that the structure is come within the road widening has not been stated. The learned counsel would also seek to contend that the findings have been recorded in variance with the issues framed.

11 Per contra, the learned counsel appearing on behalf of the MCGM Mrs. Bhoir would support the impugned judgment and order. It was the submission of the learned counsel for the MCGM that the structure of the Plaintiff was coming within the road widening of Sonapur Govandi Road and hence the notice under Section 314 of the said Act has been issued to the Plaintiff.

12 Having heard the learned counsel for the parties, I have considered the rival contentions. As indicated above the Trial Court, on the basis of the material which had come on record through the parties, has recorded findings which have been adverted to in the earlier part of this order. The Competent Authority i.e. the Assistant Commissioner has minutely gone through the documents produced on behalf of the Plaintiff which are reflected in his order. As indicated above as the regards some documents, the Assistant Commissioner has observed that they do not prove the existence of the Plaintiff's structure prior to 01/01/1990 and in respect of some other documents he has observed that they are not relating to the Plaintiff's structure. Significantly the Plaintiff has not placed any document on record to

show the authorization of the suit structure. This Court has also gone through the said documents, and on such personal evidences, the view expressed by the Trial Court that some of the documents, do not relate to the suit structure and also do not prove that the structure was in existence prior to 01/01/1995 cannot be faulted with. It is also required to be noted that the Appellant has not produced any document to show that any permission was sought by the Plaintiff from the MCGM before putting up the structure. The fact that the structure is coming within the road widening of the Sonapur Govandi Road also cannot be lost sight of.

13 In my view, having regard to the mandate of Section 314 of the said Act, the MCGM was well within its power to issue the suit notice to the Plaintiff as the structure of the Plaintiff is coming within the road widening. In my view, therefore, there is no merit in the above First Appeal. No case for interference in the Appellate Jurisdiction has made out. The above First Appeal is accordingly dismissed. In view of the dismissal of the First Appeal, Civil Application No.2050 of 2012 for stay does not survive and the same to accordingly stand disposed of as such.

[R.M.SAVANT, J]