

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER St. NO. 15659 OF 2016
WITH
CIVIL APPLICATION ST. NO.15660 OF 2016**

Mrs. Ramrati Babulal Sarkania

..Appellant

Vs.

Municipal Corporation of Greater Mumbai

..Respondent

Ms K. C. Nichani a/w Mr. A. R. Varma for the Appellant

Mr. S. K. Sonawane for the Respondent

CORAM : R. M. SAVANT, J.

DATE : 15th JUNE, 2016

P.C.

1 The above Appeal From Order takes exception to the order dated 27-4-2016 passed by the Learned Judge of the City Civil Court, Mumbai, by which order Notice of Motion No.2181 of 2014 filed by the Appellant original Plaintiff came to be dismissed. The said Notice of Motion was filed for restraining the Respondent herein i.e. the Municipal Corporation of Greater Mumbai (for short MCGM) from demolishing the structure in question. The Plaintiff was issued with a notice under Section 351 of the Mumbai Municipal Corporation Act (for short the said Act) dated 7-5-2014 alleging that the Plaintiff had carried out unauthorised construction under the staircase of the building and the lift duct. After the receipt of the said notice the Plaintiff filed his reply on 13-5-2014 and in the said reply the case of the Plaintiff was that the structure was in existence since 85 years prior to the issuance of the

said notice. The Plaintiff therefore sought protection of the said structure. The Competent Authority of the BMC considered the said reply and rejected the case made out by the Plaintiff on the ground that the Plaintiff has not been able to prove the authorisation of the structure. Apprehending that action would be taken against the said structure of demolition, the Plaintiff filed the Suit in question being L.C. Suit No.1647 of 2014 and in the said Suit filed the instant Notice of Motion No.2181 of 2014 for interim reliefs. The said Notice of Motion was replied to on behalf of the MCGM and the stand taken was that the structure of the Plaintiff was unauthorised and on account of complaints received that the action of issuing notice under Section 351 of the said Act came to be taken. It was stated that the said notice was founded on the fact that the Junior Engineer Mr. Gogate had visited the suit premises and found that there was unauthorised construction under the staircase and the lift duct. In pursuit of the relief of injunction sought in the said Notice of Motion, the Plaintiff relied upon various documents i.e. the letter dated 26-9-1974 issued by the trust which owns the building in question. The letters dated 2-12-1968, 25-11-1970, 3-8-1970 and 26-11-1968. The Plaintiff also relied upon ration card, voters card, birth certificate etc. The said documents were relied upon to buttress the case that the structure was in existence prior to the datum lince i.e. 17-4-1964.

2 The Trial Court considered each of the said documents. In so far

as the letter dated 26-9-1974 issued by the trust is concerned, the trial Court adverted to the contents of the said letter and observed that it is nowhere stated in the said letter as to the place in which the Plaintiff was residing. The Trial Court was of the view that the said letter of the year 1974 nowhere proves the authorisation of the structure. In so far as the other letters are concerned, the Trial Court has held that the said letters show that the Plaintiff is residing in the building. None of the letters show that the Plaintiff was residing in the suit premises. In so far as the ration card is concerned, the Trial Court has observed that though it is the case of the Plaintiff that the ration card is of the year 1960, the date is not visible and the Trial Court also referred to the fact that another ration card was issued in the year 2004 wherein no date of issuance has been mentioned. The Trial Court thereafter has referred to the electricity bill, telephone bill, driving licence and held that the said documents do not prove that the structure was in existence prior to the datum line. The Trial Court has further held that the Plaintiff has not produced any documents showing the authorisation of the structure, in so far as the MCGM is concerned, as no record or the approved plan has been produced by the Plaintiff. The Trial Court therefore reached a conclusion that the Plaintiff has not produced any documents to show that the structure was put up pursuant to any valid permission granted by the MCGM. As indicated above the Trial Court has by the impugned order dated 27-4-2016 dismissed the said Notice of Motion.

3 The Learned Counsel Ms Nichani appearing for the Appellant was at pains to once again demonstrate that the structure was in existence prior to the datum line i.e. 17-4-1964. The Learned Counsel sought to draw this Courts attention to the letter dated 26-9-1974 issued by the owner of the building i.e. the trust in question as also the ration card which according to the Learned Counsel is of the year 1960. It was the submission of the Learned Counsel that the case for grant of interim relief pending the Suit was made out and that it was a case for trial.

4 In my view, it is not possible to accept the contentions of the Learned Counsel for the Appellant in the teeth of the fact that there is no document produced by the Plaintiff showing any authorisation from the MCGM which is the planning authority. The documents which have been relied upon by the Plaintiff can only support the case of the Plaintiff that she was residing in the building in question but would not lend any legitimacy to the structure in question so that the same can be protected. In my view, therefore, no case for interference is made out, the Appeal From Order is accordingly dismissed.

5 In view of the dismissal of the above Appeal From Order, the Civil Application S t.No.15660 of 2016 does not survive and to accordingly stand disposed of as such.

[R.M.SAVANT, J]