

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER St.NO.17839 OF 2016
WITH
CIVIL APPLICATION St.NO.17841 OF 2016**

Vishal Kanta Singh

..Appellant

Vs.

The Municipal Corporation of Greater Mumbai

..Respondent

**Mr. Vishal Kanade i/b Mr. Omprakash for the Appellant / Applicant
Mrs M. R. Bhoir for the Respondent**

CORAM : R. M. SAVANT, J.

DATE : 7th JULY, 2016

P.C.

1 The above Appeal From Order takes exception to the order dated 12-5-2016 passed by the Learned Judge of the City Civil Court, Dindoshi, Borvili Division, Mumbai, by which order the Notice of Motion filed by the Appellant came to be dismissed. The Appellant is the original Plaintiff in L.C. Suit No.1536 of 2015. The said Suit has been filed challenging the notice issued under Section 351 of the Mumbai Municipal Corporation Act (for short MMC Act) and the order passed thereon dated 2-6-2015 by the Designated Officer of the Municipal Corporation of Greater Mumbai being the Assistant Municipal Commissioner. By the said notice it is alleged against the Plaintiff that he has carried out unauthorised construction of ground plus first floor

admeasuring 21 x 5 mt x 16.5 mt (3 + 3)/2 mt height. A rough sketch of the said structure is shown by the side of the said notice, hence the notice is in respect of a structure having a plinth of 3800 sq.ft.

2 After the receipt of the said notice, the Plaintiff replied to through his Advocates reply dated 21-5-2015. In the said reply it was the case of the Plaintiff that the suit structure is in existence since the time of his predecessor dating back to the decade of 1960. The Plaintiff inter alia relied upon the following documents : xerox copy of the deed of conveyance dated 21-10-2014 by which the Plaintiff allegedly acquired the rights to the property in question on which the structure is situated, xerox copy of the City Survey plan issued by the City Survey Officer dated 30-3-1960, xerox copy of the MOU dated 26-8-2014, xerox copy of the census certificate bearing No.KEX-18 1/1 dated 5-2-1979 in respect of the CTS No.9 on which the structure is allegedly situated, xerox copy of the notice issued under Section 354A dated 7-4-1979 to one Mr. Mark Menezes who is the predecessor of the Plaintiff, xerox copy of the letter dated 30-6-1979 issued by the MCGM to the said Mr. Mark Menezes withdrawing the notice issued under Section 354A, xerox copy of the repair permission dated 5-5-1984 obtained by the said Mr. Mark Menezes. The Designated Officer of the MCGM considered the said reply dated 21-5-2015 sent by the Plaintiff and by taking into consideration the documents on which reliance was placed by the Plaintiff made the notice absolute by holding that

the said documents do not in any manner prove that the structure in question is a protectable structure in terms of the policy of the MCGM having regard to the datum line being 1-4-1962. The passing of the said order dated 2-6-2015 by the Designated Officer triggered of the filing of the instant Suit.

3 In the Suit the Plaintiff filed the instant Notice of Motion and sought an order of injunction thereby restraining the MCGM and its officers from pulling down or demolishing the suit premises or any part thereof pursuant to the notice dated 16-5-2015 and the final order dated 2-6-2015. In so far as the averments in the Suit are concerned, it is required to be noted that it is the case of the Plaintiff that the structure is 2000 sq.ft. on the ground floor and having a mezzanine floor of 2000 sq. ft. Pertinently the Plaintiff did not dispute the measurement of the structure mentioned in the said notice issued under Section 351, in the Suit. During the course of the hearing of the instant Notice of Motion, the Plaintiff relied upon the same documents which were relied upon whilst replying to the said notice issued under Section 351. A perusal of the impugned order discloses that the said documents were considered by the Trial Court and on such consideration the Trial Court has reached a conclusion that the Plaintiff's structure is not one which is predating 1-4-1962 and therefore cannot be protected and accordingly dismissed the Notice of Motion. In so far as the document relating to census is concerned, the Trial Court cast a suspicion on the said document and opined that it is a

forged and fabricated document. In so far as the other documents are concerned, i.e. the document of the year 1979 i.e. the notice issued under Section 354A and its withdrawal as also the repair permission allegedly sought in the year 1984. The Trial Court held that the said documents do not prove the existence of the structure being prior to 1-2-1962. Apart from the said documents, it is required to be noted that the Plaintiff has relied upon the documents between one Mr. Mark Menezes and V. K. Developers from whom the Plaintiff allegedly purchased the property as also the conveyance dated 21-10-2014 executed by the said V. K. Developers in favour of the Plaintiff to which there are some confirming parties who allegedly had some rights in the property.

4 In fact the document between the said Mr. Mark Menezes and V. K. Developers and between V. K. Developers and the Plaintiff virtually sounds the death knell of the Plaintiff's case, in so far as the existence of the structure admeasuring 3800 sq.ft. is concerned, significantly in both the documents there is no mention of structure having 2000 sq.ft. on the ground floor and the mezzanine floor being 2000 sq.ft. executed by the earlier owners in favour of V. K. Developers. Hence except in the MOU dated 26-8-2014 there is no mention of the existence of the mezzanine floor in any of the documents of title. In both the documents there is also no mention of any of the documents on which the Plaintiff relies. That part the Plaintiff has also not been able to

produce any documents to show the user of the structure by his predecessors right from the year 1965 to the year 2003 when the said Mr. Mark Menezes executed an agreement for sale in favour of the said V. K. Developers. The said fact therefore impacts the credibility of Plaintiff's case that the structure of the nature alleged in the notice was in existence since long past. A perusal of the documents of the year 1979 i.e. the census certificate dated 5-2-1979 and the other documents namely the notice issued under Section 354A, in my view at the prima facie stage do not inspire confidence. It is required to be noted that it is the case of the MCGM that the said documents are forged and fabricated documents.

5 The matter has to be looked at from one more perspective. In the Deed of Conveyance dated 21-10-2014 by which the Plaintiff claims to have acquired title a sheet is annexed on which the calculation in respect of the stamp duty is mentioned and which forms part of the document of the said Deed of Conveyance. The construction mentioned therein is only of 2000 sq.ft. built up area. It is also mentioned in the said sheet that the entire plot is reserved for play ground in the development plan. Even in the document which the Plaintiff has acquired under the Right to Information Act, the Plaintiff has been informed that the said plot of land is reserved for a play ground. Hence having regard to both the aspects i.e. the aspect of the Plaintiff not making out any prima facie case for grant of discretionary relief of

injunction based on the documents on which the Plaintiff relies as also on the ground that the plot is reserved for a play ground in the development plan, no case for interference in the Appellate Jurisdiction of this Court is made out, the Appeal From Order is accordingly dismissed.

6 At this stage, the Learned Counsel appearing for the Appellant applies for continuation of the ad-interim order. In the facts and circumstances of the case where the Plot is reserved for a play ground, the said prayer is rejected.

7 In view of the dismissal of the above Appeal From Order, the Civil Application St. No.17841 of 2016 does not survive and to accordingly stand disposed of as such.

[R.M.SAVANT, J]