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

APPEAL FROM ORDER NO. 947 OF 2015

Chandrakant Nagardas Tolia/Shah .. Appellant
Vs.
The Municipal Corporation of Gr. Mumbai .. Respondent

Appellant present in person.
Mr. N. V. Walawalkar, Senior Counsel for the Respondent.

CORAM : G. S. KULKARNI, J.
DATE : 14th DECEMBER, 2016.

P. C. :

1. Not on board. Mentioned.
2. In pursuance of the order dated 22.11.2016 passed by this Court, Mr. Walawalkar, learned Senior Counsel, who is assisting the Court on behalf of the Municipal Corporation, on instructions states that the suit notice dated 20.05.2015 issued by the Municipal Corporation under Section 354-A of the MMC Act does not concern structure No. 119 belonging to the appellant Chandrakant Nagardas Tolia/Shah. Also an affidavit has been filed on behalf of the Municipal Corporation of Mr. Sadeeq Khan Hamidkhan, Assistant Engineer Designated Officer-II, K/West Ward of the Municipal Corporation placing the correct facts on record. The affidavit records that an inspection was undertaken after the order of this Court dated 22.11.2016. In the said inspection it was

observed that House No.118 mentioned in the notice is not assessed as per the Assessment Report and the appellant Chandrakant Nagardas Tolia/Shah is not concerned with House No.118. It is further stated that House No.119 mentioned in the notice is the assessed structure of the appellant and that the appellant is concerned only with House No.119. It is further stated that Municipal Corporation will take proper steps to cancel the mention of House No.119 from the said Section 354-A notice dated 20.05.2015 as also from the consequent order passed thereon and that the said notice would not be implemented against House No.119 of the appellant/plaintiff. In paragraph 5 of the affidavit, it is further stated that the Municipal Corporation will proceed against the unauthorized construction in House No.118.

3. In view of the above statements and the clear position as stated on behalf of the Municipal Corporation the appellant Mr. Chandrakant Nagardas Tolia/Shah, who is present in the Court, states that his grievance stands redressed. He submits that in view of this, the ad interim relief which came to be granted by the Trial Court and continued by this Court, the order dated 07.07.2015 be vacated. The submission deserves to be accepted in view of the stand taken by the Municipal Corporation. It is clarified that the Municipal Corporation if so advised would thus be free to proceed against unauthorized structure being structure No.118 in accordance with law.

4. The ad interim orders passed in this appeal stand vacated forthwith. The Appeal from Order in the circumstances would not require any further adjudication. Accordingly, by accepting the statements as made on behalf of the Municipal Corporation, this Appeal from Order stands disposed of. Ordered accordingly. The Court expresses its appreciation and gratitude for the assistance of Mr. Walawalkar, learned Senior Counsel.

5. Though the appeal is disposed of, there is another issue as complained by Mr. Chandrakant Nagardas Tolia/Shah (appellant) as regards the manner in which this appeal is filed, is required to be inquired into. Appellant Mr. Chandrakant Nagardas Tolia/Shah has stated that this appeal has been fraudulently filed using his name, and, in order to protect the unauthorized structure No.118 by using documents in regard to his property. Even today, he makes a grievance that he has neither signed the Vakalatnama nor he has authorized Advocate Mr. B. P. Shukla, who is stated to have filed this appeal on behalf of the appellant. Significantly when this matter was listed on 22.11.2016, Advocate Mr. B. P. Shukla, who is stated to have filed this appeal, did not appear and when the matter was called and Mr. Chandrakant Nagardas Tolia/Shah appellant appeared in person. Again on 05.12.2016, when the matter was listed, the appellant appeared in person and the Advocate did not appear in the matter. This

absence of the Advocate may have some significance. It is stated by him that at no point of time he has neither issued a Power of Attorney to one Mehraj Wazuddin Ahmed who has filed this appeal on behalf of the appellant as also affirmed the civil application on the basis of this Power of Attorney. It is stated that the Power of Attorney is a bogus and fabricated document, which shows on the last page photograph of a third person against the appellant's name. The signatures are also forged. Prima facie looking at the Power of Attorney what is being stated by the appellant Mr. Chandrakant Nagardas Tolia/Shah appears to be correct. It is stated that the stamp paper in which this document is prepared is also bogus. A copy of the General Power of Attorney as tendered by the appellant Mr. Chandrakant Nagardas Tolia/Shah is taken on record and marked 'X' for identification.

6. According to the appellant, this is a case where a fraud has been played not only on the appellant but also on this Court in filing this appeal. If the allegations are correct, it is definitely a serious matter. No doubt, the office is also required to undertake proper care in verifying the documents on the basis of which the said Mehraj Wazuddin Ahmed as a constituted attorney has instituted these proceedings. It was also an obligation on the part of the concerned Advocate Mr. B. P. Shukla to have taken due care and caution to verify all the documents including the Power of Attorney on the basis of which these proceedings are filed using the

appellant's name by Mehraj Wazuddin Ahmed. All these issues require an inquiry. If the allegations are correct, it becomes a matter of concern affecting the administration of justice being a fraud practised on the Court apart from gross abuse of the process of the Court inviting an independent criminal action as also initiation of contempt proceedings.

7. The suit in question before the City Civil Court is also filed on the basis of these documents. If the documents on the basis of which the suit came to be filed were bogus and fabricated, then the appropriate orders in the suit would also require to be passed.

8. In these circumstances, the Registrar Judicial is directed to conduct an inquiry into these allegations of the appellant Mr. Chandrakant Nagardas Tolia/Shah, of this appeal being filed by a bogus person, on a bogus Power of Attorney. The Registrar Judicial shall issue notices to concerned Advocate Mr. B. P. Shukla as also the concerned Power of Attorney holder Mr. Mehraj Wazuddin Ahmed. As the appellant Mr. Chandrakant Nagardas Tolia/Shah appeared in person and has brought these facts to the notice of the Court and his complaint has been recorded in this order he being a senior citizen, unless it is really necessary the Registrar Judicial shall not call Mr. Tolia for the inquiry he would conduct, and if such necessity of Mr. Tolia's presence occurs leave of this Court be taken before any notice is issued to Mr. Tolia. The Registrar Judicial shall

conduct and conclude the inquiry within a period of six weeks from today and place a report on the file of this appeal. Let the appeal be listed after six weeks for further orders to be passed in this regard, and if necessary to file complaint under Section 193 read with Section 191 and 199 of the Indian Penal Code with the Criminal Court through the Registry.

[G. S. KULKARNI, J.]