

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

**APPEAL FROM ORDER STAMP NO.18474 OF 2016
ALONGWITH
CIVIL APPLICATION STAMP NO.18475 OF 2016**

Smt. Yashoda Prabhu Kunyandi

.. Appellant/Applicant

Versus

**The Municipal Corporation of
Greater Mumbai**

.. Respondent

Mr. O. K. Shaikh for the Appellant/Applicant.

Mrs. Madhuri Moe for the Respondent BMC.

Mr. Gauraj Shah for the Caveator.

CORAM : R.M. SAVANT, J.

DATE : 27th JULY 2016

PC.

1 The order dated 27.06.2016 passed by the Learned Judge of the City Civil Court, Borivali Division, Dindoshi, Mumbai rejecting the application for ad-interim reliefs made by Appellant/original Plaintiff is taken exception to by way of the above Appeal from Order.

2 The Appellant is the original Plaintiff who had filed the suit in question challenging the notice under Section 351 of the MMC Act dated 23.09.2015 and the order dated 10.06.2016 passed by the Designated Officer by which order the notice was made absolute and the Plaintiff was

directed to remove the offending structure. It is alleged against the Plaintiff that she has carried out unauthorized construction of a structure with BM wall and AC sheet roof admeasuring about 30' X 25' X 10' average height at Survey No.46, Hissa No.1, CTS No.12, Ruia Park, Moragaon, Juhu, Vile Parle (West), Mumbai-400 049. The Plaintiff replied to the said notice and contended that the suit structure is in existence since the year 1945 and therefore a protected structure being in existence prior to the datum line. The said contention raised by the Plaintiff was rejected by the Designated Officer of the MCGM by passing the order dated 10.06.2016. This resulted in the Plaintiff filing the suit in question being LC Suit No.1619 of 2016 and the instant Notice of Motion therein. By the instant Notice of Motion the Plaintiff is seeking temporary injunction to restrain the Defendant MCGM from demolishing or removing the suit premises or any part thereof admeasuring 100 sq.mtrs. situated at Survey No.46, Hissa No.1, CTS No.12, Ruia Park, Moragaon, Juhu, Vile Parle (West), Mumbai-400 049. As indicated above, it is the case of the Plaintiff that the suit structure is in existence prior to the datum line i.e. the year 1964 and is therefore a structure which is required to be protected.

3 It seems that prior to the instant suit, the Plaintiff had filed Suit No.2204 of 2010 against private parties. In paragraph 5 of the plaint in the said suit, it was averred by the Plaintiff that her husband has

constructed pacca structure on the land in the year 1993. The Plaintiff it seems had thereafter filed Suit No.3191 of 2015 in which suit also she pleaded to the same effect i.e. her husband has constructed residential structure in the year 1993. It seems that in the revenue proceedings also it is the case of the Plaintiff that her husband has constructed the structure in the year 1993. Hence, in the previous suits filed by the Plaintiff herself it is her case that her husband constructed the structure in the year 1993. Therefore the case of the Plaintiff in the present suit that the structure is in existence since the year 1945 is contrary to the case of the Plaintiff in the earlier suits. The Trial Court having regard to the aforesaid fact as also having regard to the Court Commissioner's report filed in Suit No.3191 of 2015 as also assessment bill produced on behalf of the Plaintiff recorded a finding that the said documents only prove the existence of the structure which is also of a different dimensions than the one mentioned in the notice. The Trial Court further held that the bills of the assessment on the land for the year 1961-62 would not prove the existence of the structure. The Trial Court also adverted to the fact that the Plaintiff has applied for regularisation of the structure which application is pending. The Trial Court therefore concluded that the Plaintiff has applied for regularisation of the structure only because the structure is unauthorized. The Trial Court on the basis of the material on record came to a conclusion that the

Plaintiff has failed to prove that the structure was in existence prior to the datum line and as it was the case of the Plaintiff in the earlier suits that the structure was constructed in the year 1993. The Trial Court accordingly refused ad-interim reliefs. In my view, having regard to the aforesaid facts, no case for interference is made out. The Appeal from Order is accordingly dismissed.

4 In view of the dismissal of the Appeal from Order, the Civil Application does not survive and to accordingly stand disposed of.

5 At this stage, the Learned Counsel appearing for the Appellant prays for stay of the instant order. In the facts and circumstances of the case, the said prayer is rejected.

[R.M. SAVANT, J]