

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER ST. NO. 19087 OF 2016
WITH
CIVIL APPLICATION ST.NO.19089 OF 2016**

Haiderali Mohammed Kallu Shah	..Appellant
Vs.	
Municipal Corporation of Greater Mumbai	..Respondent

Mr. C. K. Tripathi for the Appellant / Applicant
Mrs. M. R. Bhoir for the Respondent

CORAM : R. M. SAVANT, J.
DATE : 26th JULY, 2016

P.C.

1 The above Appeal From Order arises out of the order dated 28-6-2016 passed by the Learned Judge of the City Civil Court, Greater Mumbai, by which order the Notice of Motion filed by the Appellant / original Plaintiff came to be dismissed. The Appellant / Plaintiff came to be issued a notice under Section 351 of the Mumbai Municipal Corporation Act, alleging carrying out unauthorised construction of ground floor structure admeasuring 10 x 10 with tin shed wall and A.C. sheet roof having height of 7' at front side and 7'.6 " at the rear side. The measurement and description of the suit structure was shown in the sketch on the side of the notice. The Plaintiff filed his reply dated 24-9-2009 to the said notice. It seems that the Plaintiff thereafter filed S.C. Suit No.2135 of 2009 apprehending demolition of the suit structure. The Suit was disposed of vide order dated 7-10-2009 and the MCGM was directed to pass a speaking order pursuant to the said notice issued under Section 351 of

the Mumbai Municipal Corporation Act, (for short the said Act). The Designated Officer of the MCGM passed a speaking order on 27-10-2009 making the notice absolute and calling upon the Plaintiff to remove the structure. It is thereafter that the Plaintiff filed the instant Suit challenging the said notice and the order dated 21-10-2009 and filed the instant Notice of Motion for interim relief by way of a temporary injunction against the MCGM directing it not to demolish the suit structure pending the Suit.

2 The case of the Plaintiff in the Suit is that he has purchased the land admeasuring 4800 sq.yards along with structure on 23-12-1999 from one Baldev Singh under the agreement for sale dated 23-12-1994. As the agreement was not registered, the Plaintiff made a Deed of Declaration dated 23-12-1994. The Plaintiff has thereafter in the plaint referred to Suit No.4312 of 1997 which Suit came to be disposed of vide order dated 24-6-2009 and the Defendants were permitted to lay down pipe line through the suit plot and that he has not carried out any unauthorised construction in the suit plot and that the suit structure is existing since the year 1991. It is the case of the Plaintiff that the notice dated 23-9-2009 followed by the order dated 27-10-2009 are absolutely illegal and liable to be set aside. The Defendants filed their reply to the Notice of Motion and it was the case of the Defendants that the Plaintiff has not approached the Court with clean hands and therefore the Plaintiff is not entitled to equitable reliefs. It was the case of the Defendants

i.e. the MCGM that its officers noticed the unauthorised construction admeasuring 10 x 10 ft. near compound wall of Casurina Society at the junction of Ghatkopar Andheri Link Road and Eastern Express Highway. In view thereof a notice under Section 351 of the said Act came to be issued on 23-9-2009 and the order dated 21-10-2009 came to be passed by the Designated Officer resulting in Suit No.2425 of 2009 filed by the Plaintiff challenging the said notice and the order.

3 It is the case of the Defendants that the suit structure was demolished on 25-11-2010 with the help of Pant Nagar Police Station. However, on 29-4-2010 the Plaintiff again reconstructed the demolished structure at the same location without the permission of the Competent Authority. It is in the background of the aforesaid facts that the instant Notice of Motion came to be adjudicated by the Trial Court. In so far as the agreement dated 23-12-1994 on which the Plaintiff relies to lay a claim to the suit property, the Trial Court has observed that the said agreement being admittedly unregistered on account of which the Plaintiff has executed a Deed of Declaration before the Sub Registrar, the said documents according to the Trial Court cannot create any right in favour of the Plaintiff in the suit property. The Trial Court observed that the law governing the transfer inter-vivos does not recognize transfer of immovable property under an unregistered agreement or by any declaration. Since before the Trial Court reliance was

placed on the order dated 24-6-2009 passed in Suit No.4312 of 1997, the Trial Court considered the said order. The Trial Court observed that the said Suit has nothing to do with the Plaintiff's title or possession in respect of the suit property. The Trial Court has further observed that the title of the Plaintiff or the legality of his possession of the suit property was not a fact in issue when the Suit No.4312 of 1997 was disposed of. The Trial Court has observed that the Plaintiff has suppressed the filing of the Suit No.135 of 2015 and Suit No.137 of 2015. The Plaintiff in the instant case was the Defendant No.1 in the said Suits. The said Suits were filed by one Abdul Rahman Anjaria for the relief of permanent injunction in respect of the land Survey No.65 alleging that he had purchased the suit property from the present Plaintiff and his father under MOU dated 7-8-2013. Hence the suit property involved in the said two Suits and the present Suit are one and the same. Whilst adjudicating the Notices of Motion filed in the said two Suits, a Learned Single Judge of this court observed that an unregistered and inadequately stamped MOU and Power of Attorney upon which the claim was founded in Suit No.135 of 2015 and Suit No.137 of 2015 is absolutely baseless. The Learned Single Judge observed that land Survey No.65 never belonged to the Defendant No.1 i.e. the present Plaintiff. Hence in so far as the said two Suits are concerned, the Trial Court observed that a finding has been recorded that the said land bearing Survey No.65 never belonged to the Defendant No.1 i.e. the present Plaintiff. However, the said facts have not been disclosed by the Plaintiff in the present

Suit. The Trial Court has also adverted to the fact that the land Survey No.65 was earlier owned by Godrej and some part was acquired for the BEST. The Trial Court further observed that the Plaintiff has erected several unauthorised structures in the land owned by the Government and has filed the Suit challenging the notice issued by the MCGM. The Trial Court has lastly observed that the documents relied upon by the Plaintiff do not create any interest in favour of the Plaintiff in the suit property as also the Plaintiff has suppressed the vital fact of the two Suits being filed against him wherein he is the Defendant No.1 and a finding being recorded in the said two Suits that the land does not belong to the Defendant No.1 i.e. the Plaintiff in the instant Suit. . The Trial Court on the said basis did not deem it appropriate to interfere with the order passed by the Defendants making the notice absolute.

4 In the light of the aforesaid conspectus of facts wherein the Plaintiff has no vestige of right or authority qua the land in question and has erected the structure unauthorisedly the impugned order passed by the Trial Court does not merit any interference at the hands of this court. The Appeal From Order is accordingly dismissed.

5 In view of the dismissal of the above Appeal From Order, the Civil Application St.No.19089 of 2016 does not survive and to accordingly stand disposed of as such.

[R.M.SAVANT, J]