

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (STAMP) NO.21300 OF 2016
WITH
CIVIL APPLICATION (STAMP) NO.21303 OF 2016

Mr. Roland J. D'Souza	]	... Appellant/ Applicant
Versus		
Municipal Corporation of Greater Mumbai and Anr.	]]	... Respondents

Mr. Jagdish N. Jayale for Appellant/Applicant.
Mrs. M. R. Bhoir for Respondents – MCGM.

CORAM :- R. M. SAVANT, J.
DATE :- AUGUST 05, 2016

P. C. :-

1. The above Appeal from Order seeks exception to the order dated 14/07/2016 passed by the learned Judge of the City Civil Court, Borivali Division, Dindoshi, Mumbai, by which order the application for ad-interim relief filed by the appellant/original plaintiff came to be rejected. The plaintiff was issued with a notice under Section 351 of

the Mumbai Municipal Corporation Act ('the said Act') alleging carrying out of unauthorized construction to the extent of construction of first floor with B.M. Walls and A.C. Sheet roof admeasuring about 20' X 10' and 15' X 10' and 9' height. The said notice was replied to on behalf of the plaintiff vide his reply dated 11/05/2015. In the said reply, the plaintiff relied upon the assessment bill, water bill, non-agricultural receipt. The Competent Authority of the MCGM considered the said reply and passed an order dated 10/06/2016 and thereby made the notice absolute. Insofar as the documents are concerned, the Competent Authority observed that the assessment bill does not prove the authenticity of the noticed structure as it is clearly mentioned in the bill that the first assessment date of the structure is 01/04/1990 which is later than the datum line for tolerated structures being 01/04/1964. Insofar as the electricity bill is concerned, the Competent Authority observed that the said electricity bill also does not prove that the noticed structure is existing prior to the year 1964 which is the datum line. Likewise, the other documents were also not given credence to by the Competent Authority on the ground that they do not prove the existence of the structure prior to the datum line. The said notice dated 06/05/2016 and the order passed thereon dated

10/06/2016 triggered of the filing of the instant suit for seeking relief in connection with the said notice and the order dated 10/06/2016. In the plaint, it has been averred that the structure is on the DP road and therefore, the MCGM could not have issued the notice under Section 351 of the said Act and that it was required to invoke another provision of the said Act. In the suit, the plaintiff filed the instant Notice of Motion seeking the relief of restraining the MCGM from acting upon the said notice and the said order in the matter of demolishing the plaintiff's structure. The said motion was moved for ad-interim relief. The learned Judge of the City Civil Court has, by the impugned order dated 14/07/2016, rejected the application for ad-interim relief. The sum and substance of the reasons mentioned by the learned Judge in the impugned order is that the documents on record do not prove the existence of the structure prior to the datum line ie. 01/04/1964. The learned Judge has also observed that the unregistered Sale Deed dated 29/06/1963 on the basis of which the plaintiff lays a claim to the said structure mentions a different structure than the one mentioned in the notice. The Trial Court has further observed that the plaintiff has been changing his stand as in the letter dated 18/09/2012, the plaintiff has mentioned that the

structure is by the side of the road whereas in the plaint he has mentioned that the structure is on the DP road. The Trial Court, therefore, recorded a finding that the plaintiff's structure does not seem to be affected by the DP road at present. The Trial Court especially has, with regard to the assessment bill, observed that the said assessment bill discloses the existence of 3 C.I. Sheds whereas the map produced by the plaintiff does not show the existence of 3 C.I. Sheds. The Trial Court has concluded that the documents produced by the plaintiff, *inter alia*, lead to a conclusion that the said documents being post the year 1990, the structure is therefore post the year 1990. The learned Counsel for the appellant/original plaintiff Mr. Jayale would once again seek to reiterate the contentions urged on behalf of the plaintiff before the Trial Court and would contend that the suit structure being on the DP road, the procedure that was required to be followed by the MCGM is different than issuing notice under Section 351 of the said Act. It was his contention that the plaintiff's structure is in existence since prior to 01/01/1995 and therefore the plaintiff is entitled to allotment of permanent alternate accommodation. In my view, it is not possible to accept the said contention having regard to the fact that the plaintiff has been

changing his stand from time to time as regards the exact location of the structure. The documents on record do not substantiate the case of the plaintiff that the said structure was in existence prior to 01/04/1964 or that the structure has been constructed pursuant to any authorization by the MCGM. In my view, therefore, no case for interference in the appellate jurisdiction of this Court is made out. The Appeal from Order is accordingly dismissed. However, it would be open for the plaintiff to make an appropriate application to the MCGM for the allotment of permanent alternate accommodation. If any such application is made, the MCGM would consider the same in accordance with its policy. However, the same would not be an impediment for the MCGM to take action against the offending structure.

2. In view of the disposal of the above Appeal, the Civil Application does not survive and the same to accordingly stand disposed of as such.

(R. M. SAVANT, J.)