

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

APPEAL FROM ORDER NO. 769 OF 2016

WITH

CIVIL APPLICATION NO. 971 OF 2016

IN

APPEAL FROM ORDER NO. 769 OF 2016

Razzak Abbas Khan

...Appellant

Versus

Municipal Corporation of Greater Mumbai

...Respondent

Mr. P.J. Thorat, for the Appellant.

Mrs. Madhuri More, for Respondent.

CORAM : R.M. SAVANT, J.

DATE : 12th August 2016

P.C. :

1. The above Appeal from Order takes exception to the order dated 4th August 2016 passed by the learned Judge of the City Civil Court by which order the Application made by the Appellant/original Plaintiff for ad-interim relief came to be rejected.

2. The Appellant who as indicated above is the original

Plaintiff was served with the notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 (“**M.M.C. Act**” for short) alleging carrying out unauthorised construction, on the ground and the first floor, of the dimensions mentioned in the said notice. The Appellant replied to the said notice and in the said reply, it was the case of the Appellant that the said structure was in existence for more than 40 years. The Appellant in support of the said case, relied upon various documents amongst which was the judgment and order dated 15th September 2004 passed in the Suit filed by Plaintiff being L.C. Suit No. 5604 of 1999 by which the said Suit came to be decreed and resultantly, the Municipal Corporation of Greater Bombay (“**M.C.G.M.**” for short) was restrained from taking any action in respect of the first floor of the said structure on the basis of the notice issued under Section 351 of the M.M.C. Act. The said Suit was filed in respect of an earlier notice issued under Section 351 which was relating to the first floor of the structure. The Designated Officer of the M.C.G.M. has by his order dated 15th July 2016 confirmed the notice and has refused to take into consideration the documents on the ground that they do not prove the existence of structure prior to 17th April 1964. The said notice dated 27th April 2016 and the order dated 15th July 2016 passed by the Designated Officer has given rise

to filing of the instant Suit by the Plaintiff. In the instant Suit, the Plaintiff has prayed for a declaration as regards the notice and the order passed by the Designated Officer and has sought an injunction restraining the M.C.G.M. from taking action against the structure pursuant to the said notice and the order.

3. In the said Suit, the Plaintiff has moved the instant draft Notice of Motion for ad-interim reliefs. The ad-interim relief has been refused by the Trial Court *inter alia* on the ground that the Plaintiff is not the owner of the structure and therefore, he does not have the *locus standi*, that the CTS map produced by the Plaintiff could not be relied upon and therefore, it could not be held that the structures showed in the said map are in existence at the time of the first survey. That the first Suit concerned five rooms whereas the instant concerned seven rooms and that the assessment bill produced by the Plaintiff shows that the structure has been assessed since 1st April 1975 and does not prove the existence of the structure prior to 17th April 1964. As indicated above, it is the said order dated 4th August 2016 passed by the learned Judge of City Civil Court is taken exception by filing the above Appeal from Order. By the said order, the Application for ad-interim reliefs has been refused.

4. The learned Counsel appearing for the Appellant Shri. Thorat draws this Court's attention to the judgment and order dated 15th September 2004 by which the L.C. Suit No. 5604 of 1999 came to be decreed. In the Plaint of the said Suit, it has been averred that the Plaintiff is the owner of Chawl No. 4 which consists of ground and one upper floor and the Chawl is admeasuring 92 feet x 40 feet and the said premises are occupied by the tenants who are seven in number. In the present Suit, it has been averred that the Razzak Chawl No. 4 consists of seven residential rooms on the first floor admeasuring 30 mtr x 12.7 mtr. in CTS No. 5684 corresponding to Survey No. 303 Hissa No. 18. The learned Counsel further pointed out that the assessment bill issued by the M.C.G.M. which shows the assessment from the year 1975 in respect of Chawl No. 4. Learned Counsel also seeks to place reliance on the CTS map. It seems that the complainant one Bhupendra Hirji Veera had approached the Grievance Redressal Committee set up by the M.C.G.M. in respect of the unauthorised construction, the Grievance Redressal Committee by its order dated 7th October 2014 refused to take cognizance of the complaint made by the said Bhupendra Veera on account of the fact that he is a habitual complainant. Hence, having regard to the aforesaid material on record, it could not be said that the Plaintiff has

absolutely no legs to stand on and that the ad-interim reliefs are required to be rejected without even the M.C.G.M. filing any Affidavit in Reply to the Notice of Motion.

5. In the light of the said documents, in my view, a detailed enquiry is required, which can be done if the Notice of Motion is heard finally. Hence, the following directions :-

- (i) The impugned order dated 4th August 2016 is quashed and set aside.
- (ii) The parties are directed to maintain *status quo* as on date in respect of the suit property.
- (iii) The Municipal Corporation of Greater Bombay to file its Affidavit in Reply to the Notice of Motion within four weeks from date. Rejoinder, if any, within two weeks thereafter.
- (iv) The Trial Court to hear and decide the Motion expeditiously and latest by 30th November 2016.
- (v) The above Appeal from Order to accordingly stand disposed of.
- (vi) In view of the disposal of the above Appeal from

Order, the above Civil Application does not survive
and to accordingly disposed of as such.

[R.M. SAVANT, J.]