

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

APPEAL FROM ORDER NO. 770 OF 2016

WITH

CIVIL APPLICATION NO. 972 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 is companion to the Appeal from Order No. 769 of 2016. 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 constructions on the ground 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, *inter-alia* relied upon various documents amongst which were the assessment bills showing the structure as assessed from the year 1974 and the CTS Map. 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 present Suit by the Plaintiff. In the present 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 assessment bill produced by the Plaintiff shows that the structure has been assessed since 1974 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 which 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 averments in the Plaint, it has been averred that the Razzak Chawl No. 5 consists of seven residential rooms on the ground floor admeasuring 28 mtr x 10.4 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 1974 in respect of Chawl No. 5. Learned Counsel also seeks to place reliance on the CTS map. It seems that the complainant 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 if the M.C.G.M. filing any Affidavit in Reply to the Notice of Motion.

5. Since the above Appeal from Order is companion to the Appeal from Order No. 769 of 2016, similar directions as issued in the said Appeal from Order could have to be issued. 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.]