

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

Amk

APPEAL FROM ORDER (STAMP) NO. 23255 OF 2016

Michael Mascarenhas]
Age-56 years, Occ.-Business,]
Having Business Address,]
Supreme Industrial Packaging]
Gala Nos. 7 & 8, Chandu Studio]
Compound, Kalina Kurla Road,]
Kalina Santacruz East,]
Mumbai - 400 029.] .. Appellant

Vs.

1. Brihan Mumbai Municipal Corporation]
Through its Commissioner,]
Head Office, Mahapalika Marg,]
Mumbai.]
2. The Commissioner,]
Brihan Mumbai Municipal Corporation]
Head Office, Mahapalika Marg,]
Mumbai.]
3. The Deputy Commissioner,]
Brihan Mumbai Municipal Corporation]
Having his Office at K/East Ward,]
Azad Road, Gondavali Village,]
Andheri (E), Mumbai-400 069.]
4. The Assistant Commissioner]
Building and Factories,]
Brihan Mumbai Municipal Corporation]
H/East Ward, Municipal Office]
Building, Plot No. 137,]
TPS Prabhat Colony, Santacruz,]
Mumbai-400 051.]
5. Ward Officer,]
Brihan Mumbai Municipal Corporation]
H/East Ward Office,]
137, T.P.S.-Ind Road,]
Prabhat Colony, Santacruz (E),]
Mumbai-400 055.]

6.	Designated Officer	]	
	H/East Ward Office,	]	
	137, T.P.S.-IIInd Road,	]	
	Prabhat Colony, Santacruz (E),	]	
	Mumbai - 400 055.	]	.. Respondents

Mr. D. S. Sapkale for the Appellant.
Mrs. Madhuri More for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.
DATE : 29th SEPTEMBER, 2016.

ORAL JUDGMENT

1. This appeal is preferred challenging the order dated 30.07.2016 passed by the City Civil Court, Dindoshi, Mumbai in Draft Notice of Motion filed in L.C. Suit No. 2039 of 2016 thereby rejecting the ad interim relief of injunction as claimed by the appellant herein to restrain the respondents-Municipal Corporation from taking any action in pursuance to the notice issued under Section 351 of the MMC Act dated 16.04.2016 and the order dated 12.07.2016 passed thereon by the Designated Officer.

2. It is the contention of the appellant that he is the occupant of temporary structure consisting of Gala Nos.7 and 8 situated at Chandu Studio Compound, Kalina Kurla Road, Kalina, Santacruz East, Mumbai-400 029. He had taken the said structure on rent by virtue of the tenancy agreement dated 15.05.1962 since then he is in possession and

occupation of the said structure. Therefore, his possession is even much prior to the datum line and hence the structure is entitled for protection in view of the policy of the State Government. However, on 16.04.2016, he received the notice from Corporation under Section 351 of the MMC Act calling upon him to demolish the structure mentioned therein, namely, unauthorized vertical extension to the existing ground floor structure made up with B.M. Walls, Ladi-Coba-Ladi Slab and A.C. Sheet roofing etc. admeasuring 8.3 m x 12.50 m and height 6.6 m.

3. On the receipt of this notice, the appellant approached the Trial Court and sought relief of interim injunction. It is submitted by the learned counsel for the appellant that the Trial Court has, however, rejected the same on the count that there were no documents on record to show that the construction is legal and authorized. As per learned counsel for the appellant, it was incumbent on the Trial Court to consider the tenancy agreement which described the structures as existing since prior to the year 1962 and, therefore, the impugned order as passed by the Trial Court rejecting the ad interim relief of injunction needs to be quashed and set aside.

4. *Per contra*, learned counsel for the respondents-Corporation has drawn attention of this Court to the detailed order passed by the Designated Officer on 12.07.2016, after considering the reply and the

documents produced by one M/s. Supreme Ind. Packaging. It was stated in the said order that no permission was obtained from the Municipal Corporation for carrying out the unauthorized construction as mentioned in the said notice, particularly, the vertical extension to the existing ground floor structure made up with B.M. Walls, Ladi-Coba-Ladi Slab and A.C. Sheet roofing etc. Hence, according to learned counsel for the respondents, in the absence of any documents proving the legality of the said structure, the Trial Court has rightly rejected the ad interim relief.

5. In the considered opinion of this Court also, though, learned counsel for the appellant in this case is placing much reliance on the tenancy agreement dated 15.05.1962, the said agreement does not give the description of the property which is taken on rent by the appellant. It merely says that three structures were taken on monthly rent by the appellant, without disclosing the nature of those structures. Hence, by issuing notice under Section 351 of the MMC Act, an opportunity was given to the appellant to prove the legality of the impugned structure. The appellant who is the employer of M/s. Supreme Ind. Packaging, as can be seen from the documents produced by him, has submitted certain documents to the Corporation. The order dated 12.07.2016 passed by the Designated Officer reveals that all those documents were taken into consideration but none of those documents indicated that the appellant has obtained any permission for the construction of vertical extension to

the existing ground floor structure made up with B.M. Walls, Ladi-Coba-Ladi Slab and A.C. Sheet roofing etc. as described in the notice.

6. Needless to state that it was for the appellant to prima facie show that this vertical extension to the existing ground floor was in existence much prior to 1962 or it was constructed after obtaining necessary permission and getting the plan sanctioned from the Corporation. If, despite the opportunity extended to the appellant to prove the legality and validity of this unauthorized vertical extension made to the existing ground floor, the appellant has failed to do so, the Trial Court has rightly held that the appellant cannot be entitled to the relief of injunction restraining the Corporation from demolishing the same. So far as the ground floor structure is concerned, that may be in existence as can be seen from the tenancy agreement but this unauthorized vertical extension to the existing ground floor in respect of which alone, the notice is issued, being prima facie appearing to be illegal and unauthorized, the Trial Court has rightly rejected the relief of ad interim injunction. No interference is warranted in the discretion exercised by the Trial Court.

7. Hence, the appeal being without merits, is dismissed with no order as to costs.

[DR. SHALINI PHANSALKAR-JOSHI, J.]