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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO. 34065 OF 2015
WITH
CIVIL APPLICATION (STAMP) NO. 34067 OF 2015
IN
APPEAL FROM ORDER (STAMP) NO. 34065 OF 2015

Hasan Gulamali Athar	...Appellant
V/s.	
Municipal Corporation of Gr.Mumbai & Anr.	...Respondents

Mr.P.K. Shetty i/b Mr.Vijay Chavan for the Appellant.

Mr.A.V. Diwate for the Respondent- B.M.C.

CORAM : R.D. DHANUKA, J.
DATE : 5TH JANUARY, 2016.

P.C. :-

1. By this appeal from order the appellant has impugned the order dated 24th November, 2015 passed by the learned trial Judge refusing to grant ad-interim relief in the notice of motion filed by the appellant inter-alia praying for an injunction against the Municipal Corporation from taking any action pursuant to the notice dated 14th September, 2015 issued under section 354 of the Mumbai Municipal Corporation Act, (MMC Act) and the order dated 26th October, 2015 passed by the designated officer of the Municipal Corporation.
2. Learned counsel for the appellant submits that the

Municipal Corporation has issued a notice even in the year 1993 against the appellant and his brother under section 351 of the MMC Act alleging unauthorized construction on the ground floor. He submits that the Corporation however, did not take any action against the appellant pursuant to the said notice dated 13th May, 1993.

3. It is submitted by learned counsel for the appellant that the Municipal Corporation however, issued a fresh notice on 14th September, 2015 under section 351 of the MMC Act alleging unauthorized construction on the ground plus one floor.

4. It is submitted by learned counsel for the appellant that since the Municipal Corporation had not taken any action against the appellant pursuant to the notice issued in the year 1993, no action could have been taken by the Corporation in respect of the suit structure plus the alleged new structure after 23 years.

5. Upon making enquiries, the learned counsel for the appellant fairly states that the structure was constructed by the appellant in the year 1991 and not before the datum line.

6. A perusal of the impugned order passed by the learned trial Judge clearly indicates that the learned trial Judge has considered all these aspects by passing a detailed order and has rendered a prima-facie finding in view of the case of the appellant himself that he had constructed the suit structure in the year 1991,

and thus there could not be any document prior to the datum line. The appellant did not produce any permission obtained from the municipal Corporation for carrying out the said construction.

7. In my view, there is thus no infirmity in the order passed by the learned trial Judge. The appellant could not produce any document to get protection under the circular issued by the State of Maharashtra.

8. The appeal is devoid of merits and is accordingly dismissed.

9. In view of the dismissal of the appeal from order, the civil application does not survive and is accordingly dismissed. No order as to costs.

(R.D. DHANUKA, J.)