

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

**APPEAL FROM ORDER NO. 503 OF 2017
WITH
CIVIL APPLICATION NO. 646 OF 2017
IN
APPEAL FROM ORDER NO. 503 OF 2017**

Shri Ramchandra Laxman Takur ...Appellant

Versus

The Municipal Corporation of Greater Mumbai ...Respondent

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Mr.R.D.Soni a/w. Mr.S.N.Gawade i/b. Shree & Co. for the Appellant.
Mrs.Madhuri More for the Respondent.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATE : SEPTEMBER 15, 2017**

P.C.:

1. Upon urgent mentioning, taken on Production Board.
2. This Appeal from Order is directed against the order dated 18.01.2017 passed by the learned Judge, City Civil Court at Bombay, Dindoshi, Mumbai, in L.C.Suit No. 96 of 2017 thereby refusing ad-interim relief.
3. Learned counsel for the appellant submits that this pertain to the protection of structure admeasuring 250 sq.ft. situated at Prabhat Nagar, Near Krishna Nagar, S.V.Road, Dahisare (W), Mumbai -68. He further

submits that where the said area/structure is standing is declared as a slum by the Government under the Maharashtra Slum Areas (Improvement, Clearance and Re-development) Act, 1971. He further submits that the appellant/plaintiff was not aware at the time of filing of the Suit about declaration that if the structure is declared as a slum, then it is to be protected and, therefore, he prays that the order passed by the trial Court is to be set aside.

4. Learned counsel for the respondent-Municipal Corporation opposed this Appeal.

5. Heard. Upon perusal of the impugned order, it is found that the learned Judge of the trial Court has observed that in the plaint there are no pleadings in respect of such declaration of the area where the structure stands as a slum under the Maharashtra Slum Areas (Improvement, Clearance and Re-development) Act, 1971. However, on query, it is found that till today the plaint is not amended to include the pleadings in respect of declaration of the area as a slum.

6. Learned counsel for the appellant submits that he wants to take out the Chamber Summons for amendment in the plaint in respect of declaration that the said area/structure as a slum.

7. If the plaintiff proves that the said area/structure is in slum, then notice under Section 351 of the Mumbai Municipal Corporation Act is bad in law.

8. It is made clear that the reasons mentioned in the order dated 18.01.2017 by the learned Judge of the trial Court are correct. However, as the notification which states that the area where the structure is standing is declared as a slum and the amendment to that effect is remained to be carried out inadvertently and, therefore, only with a view to give a fair chance to the plaintiff, the protection of three weeks is granted.

9. If the appellant/plaintiff wants to take out the Chamber Summons, then it is to be taken out within a period of one week. The Municipal Corporation is directed to file a short reply only on the point whether the said area/structure of the plaintiff is declared as a slum or not within 3 to 4 days. Thereafter, the trial Court may hear the Notice of Motion mainly on that point, as it goes to the root of the matter. The matter is to be decided on or before 11.10.2017. Till then, the Municipal Corporation not to take any coercive step.

10. Appeal from Order is disposed of accordingly.

11. In view of disposal of the Appeal from Order, nothing survives in the Civil Application and the same stands disposed of as such.

(MRIDULA BHATKAR, J.)