

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

**APPEAL FROM ORDER NO. 441 OF 2016
WITH
CIVIL APPLICATION NO. 569 OF 2016
IN
APPEAL FROM ORDER NO. 441 OF 2016**

Sayed Aejaaz Husain Gulam Husain ...Appellant

Versus

Municipal Corporation of Greater Mumbai
& Anr. ...Respondents

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Mr.Atul Damle, Senior Advocate i/b. Mr.Suresh M.Sabrad for the Appellant.

Mrs. Madhuri More for Respondent No.1/Municipal Corporation.

Mr.Cyrus Bharucha a/w. Mr. Nikhil Mehta i/b. Nanu Hormasjee & Co. for Respondent No.2.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: DECEMBER 04, 2017**

P.C. :

1. Admit. By consent of the parties, the Appeal is heard finally and decided at the stage of admission.

2. This Appeal from Order is directed against the order dated 8th January, 2016 passed by the learned Ad-hoc Judge, Gr. Mumbai thereby rejecting Notice of Motion No. 2601 of 2015 and

Notice of Motion No. 3440 of 2015 in L.C.Suit No. 1402 of 2015 and vacating the ad-interim injunction granted on 13th July, 2015.

3. The appellant/plaintiff has filed the suit challenging the notice dated 15th April, 2015 issued by respondent no.1/Municipal Corporation under Section 354A of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as “the MMC Act”) directing the appellant/plaintiff to remove unauthorized construction of the first floor Brick Masonry wall by replacing M.S. Sheet roof into ladi-coba-ladi slab at ground floor admeasuring 9 X 24.

4. It is the case of the appellant/plaintiff that the suit structure was in existence since inception of the plaintiff, who was put in possession pursuant to the Deed of Assignment dated 9th December, 2009 entered into by the present plaintiff and the earlier tenants.

5. Learned Senior Counsel for the appellant/plaintiff has submitted that the suit structure was already in existence and, therefore, the appellant/plaintiff is in possession of the documents

in respect of construction of the first floor. He has relied on the documents produced by the appellant/plaintiff before the trial Court at the time of hearing the application below Exhibit 5. These documents are the electricity bills and a licence issued under Bombay Shops and Establishment Act in favour of previous tenants. He has further submitted that the licence issued under Bombay Shops and Establishment Act is in the name of Mohammed Sagir Mohammed Nazir from whom the appellant/plaintiff had purchased the suit premises. He has further submitted that his predecessor was running the business of metal cutting since 1963-64. He has further submitted that the notice was issued under Section 354A of the MMC Act, however, considering the note mentioned in the notice in respect of unauthorized construction, it appears that the suit structure was already in existence and only the repairs were carried out by the appellant/plaintiff.

6. Per contra, the learned counsel for respondent no.1/Municipal Corporation and learned counsel for respondent no.2 i.e. the landlord have relied on the affidavit dated 5th August, 2015 filed by Shri Prakash S. Sonawane, Officer of the Municipal

Corporation, 'E' Ward, wherein he has mentioned that the suit site was inspected and it was found that unauthorized construction was going on. The photographs of work in progress were taken and Panchnama dated 15th April, 2014 was drawn. They have relied on the said Panchnama and the photographs of work in progress. It is made clear by the learned counsel for the Municipal Corporation and learned counsel for respondent no.2 that the construction of the ground floor is authorized and there is no issue about the same, but the construction of the first floor is disputed, as it is unauthorized.

7. Perused the Deed of Assignment executed between the plaintiff and earlier tenants. In the said Deed of Assignment, the description of the property, which was let out to the plaintiff and the property wherein he was put in possession is described as Shop No.1, Ground Floor. Such description is appearing nearly at three places in the said Deed of Assignment and nowhere, the property is described as ground + one structure. Hence, I am of the view that this Deed of Assignment *prima-facie* goes in favour of the Municipal Corporation.

8. Also, perused the impugned order passed by the trial Court. The trial Court has considered all the documents so also the notice issued under Section 354A of the MMC Act. *Prima-facie*, it shows that the appellant/plaintiff has no case to protect the suit structure. The document filed by the Municipal Corporation discloses that the Municipal Corporation after issuance of notice has called upon the appellant/ plaintiff to submit the documents or evidence to show that the suit structure was in existence prior to 1st April, 1962. The appellant/ plaintiff could not show the existence of unauthorized structure i.e. the first floor prior to datum line. The Assistant Engineer (Bldg. & Fact) Designated Officer, 'E' Ward passed the order on 15th July, 2015. I do not find any illegality in the order dated 15th July, 2015 passed by the Assistant Engineer (Bldg. & Fact) Designated Officer, 'E' Ward so also the order dated 8th January, 2016 passed by the learned Ad-hoc Judge, Gr. Mumbai. Hence, Appeal from Order is dismissed.

9. In view of dismissal of Appeal from Order, Civil Application does not survive and the same is accordingly disposed of.

(MRIDULA BHATKAR, J.)