

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

**APPEAL FROM ORDER (ST) NO.4372 OF 2017  
WITH  
CIVIL APPLICATION (ST) NO.4373 OF 2017  
IN  
APPEAL FROM ORDER (ST) NO.4372 OF 2017**

Smt.Tulsi Kishan Naidu & Anr. ..Appellants/Applicants  
V/s.  
Municipal Corporation of Gr.  
Mumbai & Anr. ..Respondents

**WITH  
APPEAL FROM ORDER (ST) NO.4376 OF 2017  
WITH  
CIVIL APPLICATION (ST) NO.4377 OF 2017  
IN  
APPEAL FROM ORDER (ST) NO.4376 OF 2017**

Mr.Eknath Krishna Prabhu ..Appellant/Applicant  
V/s.  
Municipal Corporation of Gr.  
Mumbai & Anr. ..Respondents

**WITH  
APPEAL FROM ORDER (ST) NO.4380 OF 2017  
WITH  
CIVIL APPLICATION (ST) NO.4382 OF 2017  
IN  
APPEAL FROM ORDER (ST) NO.4380 OF 2017**

Mr.Sanjay Dhonduram Jadhav ..Appellant/Applicant  
V/s.  
Municipal Corporation of Gr.  
Mumbai & Anr. ..Respondents

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Mr.Jagdish N. Jayale for the Appellant/Applicant.  
Mr.Sunil Sonawane a/w Ms.Madhuri More for Respondent-MCGM.  
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**CORAM : M. S. SONAK, J.**

**DATE : 15 MARCH 2017.**

**P.C.**

1. Heard Mr.Jayale, the learned counsel for the appellants and Mr.S.K. Sonawane along with Ms.Madhuri More learned counsel for the Municipal Corporation of Greater Mumbai (MCGM) and Designated Officer.

2. With the consent and at the request of learned counsel for the parties, this appeal is disposed of finally at the stage of admission.

3. The challenge in this appeal is to the order dated 3 February 2017 by which the learned Trial Judge has declined ad-interim relief to the appellant seeking to restrain the respondent from demolishing the First Floor of the suit premises in pursuance of notice dated 06-03-2010.

4. The impugned order, records the submissions of the parties and thereafter,proceeds to state that there is no illegality and non-application of mind on the part of Designated Officer in making

the order dated 22-12-2016, by which, the notice dated 06-03-2010, came to be disposed of.

5. Taking into consideration that the notice was issued on 06-03-2010 and reply had been filed by the appellant on 06-04-2010, *prima-facie* it appears that a further scrutiny was warranted in the facts and circumstances of the present case. Admittedly, there appears to be no dispute with regard to the ground floor structure. The offending structure in the present case is the first floor structure. The appellants have produced certain documents, which may or may not support the appellant's case that the first floor structure is indeed an unauthorized structure. However, further scrutiny was warranted in the matter and ad-interim relief ought not to have been declined by merely observing that the order dated 22-12-2016 appears to be legal and not vitiated by non application of mind.

6. Accordingly, the impugned order is set aside. The learned Trial Judge is directed to dispose of the Notice of Motion on its own merits and in accordance with law as expeditiously as possible and in any case within a period of eight weeks from date of production of authenticated copy of this order. All contentions of

all parties are left open.

7. The learned Trial Judge need not be influenced by any observations made in the impugned order dated 03 February 2017 or for that matter the present order.

8. The appellant is also directed to maintain *status-quo* in respect of the suit premises.

9. The appeal is allowed to the aforesaid extent. There shall be no order as to costs.

10. The learned counsel for the parties agree that the material facts insofar as these two appeals are concerned are substantially similar to the facts in Appeal From Order Stamp No.4372 of 2017.

11. Therefore, for the reasons set out in the impugned order dated 15 March 2017 in Appeal From Order Stamp No.4372 of 2017, these appeals are also allowed by issuing identical directions.

12. All parties to appear before the learned Trial Judge on

24 March 2017 at 3.00 p.m. and file an authenticated copy of this order.

13. In view of the disposal of the Appeal, the Civil Application does not survive and the same is also disposed of.

**(M. S. SONAK, J.)**