

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

**APPEAL FROM ORDER (ST) NO.5578 OF 2017  
WITH  
CIVIL APPLICATION (ST) NO.5579 OF 2017  
IN  
APPEAL FROM ORDER (ST) NO.5578 OF 2017**

Rajnikant Narayan Shinde ..Appellant/Applicant  
V/s.  
Municipal Corporation of  
Greater Mumbai ..Respondent

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Mr.P.J. Thorat for the Appellant/Applicant.

Ms.Madhuri More for the Respondent-BMC.

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**CORAM : M. S. SONAK, J.**

**DATE : 08 MARCH 2017.**

**P.C.**

1. Heard learned counsel for the parties.
2. The challenge in this appeal is to the order dated 20 February 2017 by which ad-interim relief has been declined to the appellant/plaintiff.
3. Mr.Thorat, learned counsel for the appellant submits that there are several documents which provide for the existence of

the suit structure i.e. Patra (Tin Shed) admeasuring 6.45 sq.ft. He submits that certain officers of the Municipal Corporation of Greater Mumbai (MCGM) visited the site and threatened demolition. He submits that documents like licenses under the Maharashtra Shops and Establishment Act, 1948 are not required in respect to such suit structure. Mr.Thorat submits that the ad-interim orders granted in the earlier round of litigation instituted by the appellant's predecessors in title are more than sufficient for the purpose of the grant of ad-interim relief, since, MCGM, in any case has no right to take any action in the suit structure, otherwise than by the due process of law. Mr.Thorat relies upon the decision in the case of *Abdul Hasan Shaikh Mansuri V/s. Municipal Corporation of Mumabi & Ors. (2007-(4)-All.M.R.-97)* to support the proposition.

4. Ms.More, learned counsel for the MCGM states that there is no error in the impugned order and therefore, this appeal may not be entertained.

5. In paragraph Nos.7,8 and 9 of the impugned order the learned Trial Judge has observed thus :-

*“7. Admittedly from the averments of the plaintiff itself it appears that the Corporation has not issued any notice*

*to the plaintiff calling upon him to remove himself from the suit property. Moreover the plaintiff himself through his son Vaibhav has claimed to have requested for time till 27/01/2017 for production of documents with cooperation. The plaintiff has not stated anything as to whether he has tendered documents to the office of Assistant Commissioner "F" South Ward after 27/01/2017 till date and any order is passed thereon by the Corporation.*

*8. There is no prima-facie material on record to establish that Patra (Tin Shed) is admeasuring 6.45 sq.ft. as claimed by the plaintiff is in existence. The final order passed in notice of motion no.5362/1999 in suit no.6668 of 1999 are not placed on record. Nor the copy of the order in previous motion either confirming order, rejecting the notice of motion in the said suit is made available for perusal of this court. In this background the apprehension in the mind of plaintiff in absence of any Notice of the Corporation appears to be pre-matured. Nothing is pointed out, as to why plaintiff has failed to file documents to the Assistant Municipal Commissioner after seeking time till date. This conduct on the part of plaintiff results in withholding documents without any justifiable grounds. Nothing is pointed out as to which particular officer and in which capacity the BMC officer has allegedly paid to visit at the suit premises on 19-01-2017 and 10-02-2017 at 11.30 a.m."*

*9. Having regard to the passage of time after*

*giving of alleged threats by the officials of the Corporation and the approach of the plaintiff to this court for seeking Ad-interim relief it is just and necessary to give an opportunity to the defendant to file their detail reply and to produce the documents if, any. In view there of and for the reasons stated above, I proceed to pass following order.*

**ORDER**

1. *Ad-interim relief in favour of plaintiff at this stage is refused.*
2. *Defendant to file their reply to the notice of motion on 27-02-2017.*
3. *Suit to proceed further.*

6. At this stage, the MCGM is yet to file its written statement/reply. None of the documents produced on record indicate that the suit structure has been constructed with any valid permission or that it was in existence prior to the datum line i.e. 1961-1962. Even on the basis of the documents produced, some investigation is necessary so as to ascertain whether the documents produced really relate to the suit structure or not.

7. With regard to the previous suit instituted by the so called predecessor in title of the appellant, only a typed copy of ad-interim order has been produced. However, nothing is stated about

the final order in the suit, since, by now, it is reasonable to presume that the suit itself may have been disposed of. There is a letter placed on record, which was addressed by the son of the appellant to the Assistant Commissioner of Municipal Corporation of Greater Mumbai. In this letter, it is stated that the documents will be produced by 27 January 2017. The suit was instituted some time in February 2017, however, there was no statement in the plaint that any documents were produced before the Assistant Commissioner as undertaken by the appellant's son on or before 27 January 2017.

8. The decision in the case of Abdul Mansuri (Supra) is being misinterpreted by the appellant. The decision, does not lay down as a proposition of law that the plaintiff can, in every case, obtain interim relief or ad-interim relief as a matter of routine, simply by expressing apprehension that MCGM will take action otherwise than by due process of law. In any case, minimum that is expected of plaintiff is that the plaintiff states that the suit structure is not only in existence but also, it has also some semblance of legality. Otherwise, any plaintiff who puts up a illegal and unauthorized structure will simply rush to the Court and deflect or at least delay even the taking of steps by the Municipal Authorities, on account of the pendency of the matter.

9. The observations in Abdul Mansuri (Supra) were in the context of the fact that in the said case, the MCGM had not even filed written statement to contest or deny the averments in the plaint. In this case, it cannot be presumed that the MCGM will not even file a reply in the matter.

10. Ms. More states that suit structure is on the Municipal property and further, the documents which the appellant relies upon have no nexus with the suit structure. At this stage, it is not necessary to go into all these aspects. However, it suffices to note that the view taken by the learned Trial Judge that the matter can be considered after some reasonable opportunity is given to the MCGM to file its reply is reasonable and correct.

11. In Abdul Mansuri (Supra) this Court, in paragraph No.10, had made following observations:-

*“10. Indeed, it is possible that in a given case, taking advantage of such statement to be made by the Authority the unscrupulous plaintiff may carry on some unauthorized construction or extend the existing structure. To obviate such a situation, the plaintiff shall be obliged to produce on record, on affidavit, the latest photographs showing all the dimensions of the suit*

*structure and the plans thereof to be certified by a licenced Architect, so that the onus will rest on the plaintiff if any additional construction is noticed later on during the action before the Authority or the Court of law and such plaintiff can be denied the equitable relief as also proceeded against for appropriate action, civil and criminal.”*

12. In this case, the appellant has not produced on record the latest photographs of the suit structure along with the certification by the architect. The allegation with regard to the apprehensions, are vague and the learned Trial Judge cannot be faulted for not relying upon the same. The possibility that the appellant is trying to stall action on the part of the MCGM, even through, such action may be consistent with the due process of law, cannot be ruled out in the fact and circumstances of the present case.

13. Accordingly, no case is made out to interfere with the impugned order and the appeal is accordingly dismissed.

14. It is made clear that the observations herein are only *prima-facie* and the Trial Judge need not be influenced by the same

at the time of the disposal of the Notice of Motion. At the same time, it is made clear that the MCGM is of the opinion that the suit structure is illegal and that the mere pendency of the matter shall not preclude the MCGM from taking an action against the suit structure by following due process of law.

15. The Civil Application does not survive and the same is disposed of.

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