

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

**FIRST APPEAL (ST.) NO.10228 OF 2017
WITH
CIVIL APPLICATION NO.1386 OF 2017**

Mr. Premchand Ramkhilavan Yadav ... Applicant/Appellant
Versus

The Municipal Corporation of Greater
Mumbai And Others ... Respondents

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Mr. S.K. Dubey for the Appellant/Applicant.
Mr. M.R. Bhoir for Respondent No.1/MCGM.
Mr. A.M. Rajabally for Respondent Nos.2 to 5.

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CORAM : S.C.GUPTE, J.

DATE : 3 MAY 2017

P.C. :

. Heard learned Counsel for the parties.

2 By consent of the parties, the First Appeal is admitted and taken up for final hearing forthwith.

3 The First Appeal challenges a decree of dismissal passed by the City Civil Court at Bombay, on 16 March 2017 in the Appellant's suit. This suit was filed *inter alia* challenging a notice under Section 351 of Mumbai Municipal Corporation Act 1888 ("MMC Act") issued on 17 August 2005 read with final reasoned order passed thereon 21 October 2005 and notice under Section 488 of the MMC Act issued by MCGM on 6 November 2008, intimating to the Plaintiff about the proposed demolition of the

unauthorised construction covered by the notice under Section 351 and the reasoned order passed thereon. The suit was dismissed *inter alia* on the ground that the suit was beyond time, since it was more than six months after the impugned order passed on 21 October 2005 and the notice under Section 351 and also for want of notice under Section 527(1)(a) of the MMC Act. The suit was also dismissed on merits, as according to the Trial Court, the Plaintiff had failed to prove that the notice under Section 351 and final reasoned order passed thereon by the Defendant corporation were illegal, null or void.

4 Learned Counsel for the Appellant/Plaintiff does not dispute that the suit is not within six months of the notice under Section 351 or the final reasoned order passed by the MCGM. Learned Counsel, however, submits that he is entitled to challenge the notice under Section 488 of the MMC Act and alongwith such challenge, also impugn the original notice under Section 351 and the reasoned order passed thereon by the Defendant corporation. Learned Counsel submits that the notice was issued on 17 August 2005 and the final reasoned order passed thereon on 21 October 2005. Learned Counsel submits that the Defendant corporation thereafter did not take any action till on 6 November 2008, when it issued notice under Section 488 proposing demolition of the purported unauthorised construction. Learned Counsel, in the premises, submits that the suit filed within six months of the notice under section 488 is within time. It is, however, pertinent to note that the main challenge in the suit to the notice under Section 351 and the final reasoned order passed thereon 21 October 2005 confirming the notice. The Defendant corporation after passing of the final order on the notice under Section 351 could have any time

demolished the unauthorised portion of the suit structure, namely, the first floor erected without permission of MCGM. Merely because the Defendant corporation chose to issue notice under Section 488 of the MMC Act, the Appellant/Plaintiff is not entitled to challenge the action of demolition, which is clearly in pursuance of the original notice issued under Section 351 and the final reasoned order passed thereon by the Defendant corporation. There is, thus, no merit in the challenge to the impugned order on the ground of its rejection of the suit for the bar of limitation.

5 Even as regards the notice under Section 527(1)(a) of the MMC Act, learned Counsel for the Appellant/Plaintiff has no answer to the dismissal of the suit on the ground of want of such notice.

6 As regards the merits of the suit, it is submitted by learned counsel for the Appellant/Plaintiff that there is no first floor in existence in the suit structure. He pleaded that the suit structure merely consists of ground floor with a height of about 15.6 ft. It is pertinent to note in this behalf that the sketch of the structure shown in the notice issued by MCGM under Section 351, shows the suit structure as consisting of ground plus first floor, the heights of ground and first floors, respectively, being of 8 ft 6 inch and 7 ft. The Appellant/Plaintiff has in his cross-examination specifically accepted the correctness of the sketch of the structure shown in the notice under Section 351. There is a categorical admission that this sketch is as per the existing structure. There is, thus, no merit even in this challenge to the impugned order.

7 There is admittedly no authorization as far as the first floor is concerned and there is nothing to show that the first floor structure existed before the datum line. There is, in fact, nothing to show that it existed for any particular length of time before the corporation issued its notice under Section 351. Accordingly, there is no merit in the First Appeal. The First Appeal is dismissed. No order as to costs.

8 In view of the dismissal of the First Appeal, Civil Application No.1386 of 2017 does not survive and the same is also disposed of.

(S.C. GUPTE, J.)