

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (STAMP) NO.11302 OF 2017
WITH
CIVIL APPLICATION (STAMP) NO.11303 OF 2017
IN
APPEAL FROM ORDER (STAMP) NO.11302 OF 2017**

Dattaram Ramchandra Setkar ...Appellant/Applicant
vs.

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

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Ms. Jeniffer Michael, a/w. Ms. Ridhi Rana, i/b. Dhiren H. Shah, for the Appellant.

Mr. Sunil Sonawane, a/w. Ms. Madhuri More, for Respondent No.1/MCGM.

Mr. Anil Kumar Patil, a/w. Mr. Mithun Mahajan, for Respondent No.2/Society.

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CORAM : S.C. GUPTE, J.

DATED : 21 APRIL 2017

P.C. :

. Heard learned Counsel for the parties.

2. The Appeal from Order challenges an order passed by the City Civil Court at Bombay on a Notice of Motion by the Appellant (Original Plaintiff). The Plaintiff's suit challenges a notice issued by the Municipal Corporation of Greater Mumbai under Section 351 of the Mumbai Municipal Corporation Act for demolition of the suit premises. The suit premises consists of a shed admeasuring 10 ft. x 4 ft.

constructed with BM wall and AC sheet roof. The premises are constructed on a footpath forming part of St. Francis Road, near Pritam Society Extension, Milan Subway Road, Lohia Nagar, Santacruz (W), Mumbai 400 054. The Plaintiff's case before the Trial Court was that he had been in possession and occupation of the suit premises since last about 20 years and that the premises were situated on a plot of land bearing City Survey No.1597-C, Taluka Vile Parle in Mumbai. It is submitted that this plot is owned by Pritam Cooperative Housing Society Limited, who have made a false complaint to the Defendant Corporation, on the basis of which the impugned notice is issued. It is submitted that the Plaintiff is in possession of a shop and establishment certificate as well as evidence such as electricity bills, telephone bills, etc. to show his occupation and possession.

3. The impugned notice issued by the Municipal Corporation is on the basis that the suit structure is unauthorized. It is constructed right on the road and cannot be allowed to stand. The learned Judge has correctly noted in the impugned order that the documents showing possession apart, there is no single document to show authorisation of the suit structure. Besides, it is not a case of the Plaintiff that the structure has been in existence since prior to 17 April 1962, which is the datum line for commercial premises in accordance with the State Policy. (Commercial structures constructed prior to 17 August 1962 are allowed to be regularized under the policy of the State.)

4. In the premises, there is no merit in the Appeal from Order. The Appeal from Order is dismissed. No order as to costs.

5. On the request of learned Counsel for the Appellant, the Appellant is granted four weeks' time to remove his goods and belongings from the suit structure. The Defendant Municipal Corporation will be within its rights to demolish the suit structure after four weeks with the use of such force and police assistance as may be necessary. In the meantime, the Appellant shall not create any third party right or part with possession of the suit structure in favour of any party.

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

(S.C. GUPTE, J.)