

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 737 OF 2015
WITH
CIVIL APPLICATION NO. 896 OF 2015

Noor Mohd Sarfaraz Khan	...Appellant
<i>Versus</i>	
The Municipal Corporation of Greater Mumbai	...Respondent

None for the Appellant.
Mrs Madhuri More, for the Respondent/MCGM.

CORAM: G.S. PATEL, J
DATED: 13th June 2017

PC:-

1. The Appeal is directed against an order dated 24th April 2015 dismissing the Plaintiff's Notice of Motion. The Plaintiff challenged a notice under Section 354-A of the Mumbai Municipal Corporation Act 1888. The provisions of the Act are clear. They empower the Municipal Corporation to act when it finds that unauthorized or illegal work is ongoing. In a challenge to such a notice, as the learned Judge correctly observed, a Plaintiff would have to show by cogent material on record that the construction work was completed or was not in progress. Paragraph 10 of the impugned order notes precisely this.

2. I find from the Appeal Memo and the compilation that there is no document annexed to sufficiently establish that the work complained of under the notice was completed or not ongoing.
3. In my view, there is no case made out for interference with the impugned order which is confirmed. The Appeal is dismissed but without costs.
4. The Civil Application does not survive and is disposed of as infructuous.
5. It is clarified however that the Suit will proceed to trial and will be decided on its own merits uninfluenced either by the interim order or by the present order.
6. All rights and contentions are specifically kept open in that behalf.

(G. S. PATEL, J)