

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

**FIRST APPEAL NO. 442 OF 2017
WITH
CIVIL APPLICATION NO. 1448 OF 2017
IN
FIRST APPEAL NO. 442 OF 2017**

Shreedharan R. Thallya Parambil
Proprietor of Hotel Santosh (Tadka-1) ...Appellant

Versus

Municipal Corporation of Greater Mumbai
& Ors. ...Respondents

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Mr.P.D.Dalvi i/b. Mr.P.C.Kansara for the Appellant.
Mrs.M.R.Bhoir for Respondent Nos. 1 to 3/ Municipal Corporation.
Mr.J.S.Kini i/b. Mr.Suresh Dubey for Respondent No.4.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: NOVEMBER 21, 2017**

P.C. :

1. Admit. By consent of the parties, the Appeal is heard finally and decided at the stage of admission.

2. This Appeal is directed against the judgment and order dated 25th April, 2017 passed by the learned Ad-hoc Judge, City Civil Court, Gr. Bombay in Suit No. 1786 of 2015 thereby holding

that the Civil Court has no jurisdiction to try and entertain the Suit, hence dismissed with costs.

3. The appellant/plaintiff has filed the suit challenging the notice dated 18th December, 2013 issued under Section 351 of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as "the MMC Act") and also challenging the consequential order dated 22nd July, 2015. The appellant/plaintiff prayed that the said notice and consequential order passed thereto are illegal, bad in law and, therefore, the respondents/defendants be restrained from taking action against the appellant/plaintiff. The appellant/plaintiff was running the hotel/restaurant at Chembur under the name and style of Hotel Santosh Tadka. The appellant/plaintiff is having a licence under the Shop and Establishment Act and also having the licence from the competent authority to run the said restaurant and bar. The appellant/plaintiff without any authority had constructed some portion of the said hotel and defendant nos. 1 to 3/ Municipal Corporation after considering the case of the plaintiff held that the plaintiff has failed to establish that the structure is authorized and, therefore, notice of demolition of structure was issued. After filing of the Suit and service of notice of the said Suit, defendant nos. 1 to 3/Municipal

Corporation appeared and filed the written statement and contesting the claim of the plaintiff. In view of provisions under Section 515A of the MMC Act, defendant nos. 1 to 3/Municipal Corporation challenged the jurisdiction of the Civil Court and the preliminary issue was framed by the trial Court accordingly. After hearing both the parties, the trial Court held the issue in favour of the defendants and dismissed the Suit. Hence, this Appeal.

4. Learned counsel for the appellant/plaintiff has submitted that the learned Judge of the trial Court has committed error in dismissing the suit on the ground of jurisdiction under Section 515A of the MMC Act. He has further submitted that the learned Judge of the trial Court was not correct in considering the ratio laid down in the case of ***Abdul Karim Ahmed Mansoori V/s. The Municipal Corporation of Greater Mumbai & Another***, reported in **2013 6 AII MR 323**. He has further submitted that the plaintiff has challenged the notice issued by the Municipal Corporation on the ground that the notice is illegal, bad in law and violating the MMC Act. The Civil Courts have jurisdiction to try and entertain all suits of a civil nature unless expressly or impliedly barred. In the case of ***Abdul Karim Ahmed Mansoori (supra)***, the Division Bench of this Court has observed that the jurisdiction of the Civil

Court is not ousted due to Section 515A of the MMC Act, if the plaintiff has good case on the point of legality of the notice. It is a mixed question of fact and law and, therefore, the trial Court should have continued with the matter by giving fair opportunity to the plaintiff to lead evidence on the issue of legality. He prayed that the order passed by the learned Judge of the trial Court is to be set aside and the suit be restored.

5. Learned counsel for the respondents/ Municipal Corporation and also private party i.e. the landlord while supporting the order of the trial Court, have submitted that while answering the preliminary issue of jurisdiction, the learned Judge of the trial Court has not committed any error of law.

6. Learned counsel for respondent no. 4 has referred the plaint and argued that there is no averment that the impugned notice issued by the Municipal Corporation is nullity and it is against the provisions of the MMC Act. It is necessary for the appellant/ plaintiff to plead accordingly to bring his case out of the ambit of Section 515A of the MMC Act and within the jurisdiction of the Civil Court. In support of his submission, he relied on the judgment of the Division Bench of this Court in the case of **Abdul**

Razzaq Sunesra vs. Municipal Corporation of Greater Mumbai reported in ***2014 (1) Mh.LJ 275*** and also the judgment of ***Abdul Karim Ahmed Mansoori (supra)*** so also the judgment of Single Judge of this Court in ***Writ Petition No. 2243 of 2013 dated 10th April, 2014*** in the case of ***Mr.Yogesh Megaji Gada V/s. The Municipal Corporation of Greater Mumbai & Anr. and other Writ Petitions.***

7. Before dealing with the legality and correctness of the impugned order passed by the learned Judge of the trial Court, it is useful to consider the law laid down by the Division Benches and Single Bench of this Court on Sections 515 A and 354 A of the MMC Act. Section 515 A of the MMC Act is reproduced as follows :

"515A : Bar of jurisdiction :

Save as otherwise provided in this Act, any notice issued, order passed or direction issued by the Designated Officer, under section 351 or 354A shall not be questioned in any suit or other legal proceedings."

8. Section 515A of the MMC Act bars jurisdiction of the Civil Court. The constitutional validity of Section 515A of the MMC Act though was challenged in ***Writ Petition (Idg.) No. 1709 of 2013***

in the case of Abdul Razzaq Sunesra vs. Municipal Corporation of Greater Mumbai. The Division Bench of this Court after referring the law laid down in landmark judgment of the Supreme Court in the case of ***Dhulabai Vs. State of Madhya Pradesh*** reported in ***AIR 1969 SC 78***, wherein the Supreme Court has discussed and summarized the principles of law governing the interpretation of finality clauses and statutory provisions ousting the jurisdiction of civil courts and also discussed expressly or impliedly barred. The Division Bench of this Court while upholding the constitutional validity of Section 515A of the MMC Act has held that there is an adequate procedure and sufficient safeguards when the notices under Sections 351 and 354A of the MMC Act for demolition of unauthorized structures are issued. So, the Designated Officer is required to pass the order only after considering the case of the aggrieved persons.

9. In the case of ***Abdul Karim Ahmed Mansoori (supra)***, other Division Bench of this Court has further considered the maintainability of the civil suit and jurisdiction of the Civil Court in view of Section 515A of the MMC Act. In the said case, the Division Bench while pointing out the circumstance under which bar on jurisdiction can be lifted, has relied on the judgment of the

Supreme Court in the case of **Shiv Kumar Chadha V/s. Municipal Corporation of Delhi** reported in **1993 (3) SCC 161**, wherein it was observed as under :

“If the Civil Court is of prima-facie opinion that the order passed by the Municipal Corporation is nullity in the eyes of law because of any jurisdictional error in exercise of the power by the commissioner or that the order is outside the Act.”

10. In the case of **Commissioner, Akola Municipal Corporation vs. Bhalchandra s/o. Govind Mahashabde**, reported in **2003 (4) Mh. L.J.45**, the learned Single Judge of this Court while dealing with the identical Section 433A of the MMC Act putting bar on the jurisdiction of the Civil Court, as specifically pointed out the parameters under which the Suit can be entertained by the Civil Court.

11. In the case of **Abdul Karim Ahmed Mansoori** (*supra*), the Division Bench of this Court has elaborated the law further,

“if the act of issuance of such notice is nullity, or that while issuing such notice, the mandatory provisions of the said Act have not been complied with, or that the Authority issuing such a notice has not acted in conformity with the fundamental judicial procedure, or that it is an abuse of

exercise of power, or that the offending act has not been done in good faith, then the jurisdiction of the Civil Court is not barred as it enjoys inherent jurisdiction to try and entertain all disputes of a civil nature”.

12. All these cases are referred to and relied upon by the learned Single Judge of this Court in the case of **Mr.Yogesh Megaji Gada** (*supra*). On the background of this proposition of law, the averments made in the present plaint are examined. Nothing is specifically pleaded about ground of nullity so that the case can be covered within the parameters as mentioned above. No procedural flaw is pointed out to dispute the application of Section 515A of the MMC Act. The appellant/plaintiff was given an opportunity to reply notice dated 18th December, 2013. The appellant/plaintiff had submitted the documents with reply dated 26th December, 2013. The appellant/plaintiff failed to show the sanctioned plan and approval of the notice structure and also could not produce any document to show the existence of structure prior to 1st April 1962. Considering all these aspects, the Designated Officer, 'M/W' Ward had passed the final order on 22nd July 2015. Thus, it appears that proper procedure is followed by the Municipal Corporation and the notice of demolition is legal. The learned Judge of the trial Court has considered the law laid

down by the Division Bench of this Court and has rightly held that the Civil Court has no jurisdiction to try and entertain the Suit under Section 515A of the MMC Act. Hence, the order passed by the learned trial Judge is hereby maintained.

13. In view of the above, First Appeal is dismissed.

14. In view of dismissal of First Appeal, Civil Application does not survive, hence the same is also disposed of accordingly.

15. Learned counsel for the appellant submits that the order passed by this Court be stayed, as the appellant wants to challenge this order before the Hon'ble Supreme Court.

16. In view of this submission, this order is stayed for a period of eight weeks from today.

(MRIDULA BHATKAR, J.)