

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

**APPEAL FROM ORDER NO.747 OF 2015  
WITH  
CIVIL APPLICATION NO.903 OF 2015  
IN  
APPEAL FROM ORDER NO.747 OF 2015**

Mr.Jagannath Kedarnath Gupta  
& Others ..Appellant/Applicant

V/s.  
Municipal Corporation for Greater  
Mumbai & Anr. ..Respondents

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Mr.Piyush Shah for the Appellant/Applicant.

Mr.Sunil Sonawane a/w Mrs.M.M. More for the Respondent-  
BMC.

Mr.Chotani for Respondent No.2.

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

**DATE : 11 JANUARY 2017.**

**P.C.**

1. This appeal is directed against order dated 03-06-2015 made by the Trial Court declining ad-interim reliefs to the appellant.

2. The learned counsel for the appellant submits that

the appellants are ready to apply for regularization of the suit structures and the suit structures should be protected from the demolition until such application for regularization is considered. The learned counsel for the appellant submits that even the owner of the land on which the structure is situated of the structures can be heard by Municipal Corporation of Greater Mumbai (MCGM) when the proposal for regularization is considered. The learned counsel for the appellant submits that the several documents were produced on record to show that the structures were infact authorized. He submits that in the past structures was ordered to be demolish and some partial demolition may have been carried out. However, he submits that entire structures were never demolished. For all these reasons the learned counsel for the appellant submits that this appeal be allowed and some directions be issued to protect the structure in question.

3. Mr.Sonawane the learned counsel for the MCGM submits that this is a case of six unauthorized structures in respect of which six notices were issued. Upon consideration of

the documents submitted by the appellant a detailed order has been made noting that the structures are totally illegal and unauthorized. Mr.Sonawane pointed out and in fact in respect of the very structure the notices have been issued earlier and that stage also appellant tried to obtain protection from the Court of law but was ultimately not successful. The structures were in fact demolished. However, the appellant, has, with impunity reconstructed the very same structures and in this second round of litigation, seeks protection for these very structures.

4. The learned counsel for the MCGM submits that none of the documents produced on record establishes any authority for putting of the structures. The structures are totally illegal and unauthorized constructions. Mr.Sonawane submits that there is no question of considering any regularization at this stage. In response to the query from this Court he submits that it is mandatory that the owner of the land joins in the request for regularization even in cases where regularization is permissible.

5. Mr.Choutani the learned counsel for respondent no.2 who is the owner of the land where the suit structures exists stated that the structures are illegal, unauthorized there is no question of regularization of the structures.

6. Having considered the submissions of the learned counsel for the parties and perused the impugned order as well as material on record, in my judgment there is really no case made out to interfere with the impugned order. The impugned order is not vitiated by any error of principle or perversity. Infact, there is no document produced on record or any case shown which will suggest or establish the structures in question are in manner legal or authorized. Circumstance that the appellant now proposes to go for regularization, is itself, an admission that a structures in question are illegal and unauthorized.

7. The material on record in fact establishes that notices under section 351 had been issued in respect of these very structures and once, the appellant was unsuccessful in

obtaining any protective order from the Court of law, the structures or in any case, portions thereof were actually demolished. It is not understood by what authority of law the appellant has reconstructed the such structures. In any case, the appellant cannot claim any protection in respect of such high handed acts of reconstruction. The appellant, in the past, had approached the Courts of law. Upon being unsuccessful in obtaining the relief from Courts of the law, the appellant has chosen to take law in his own hands and reconstruct the structures without obtaining any permission or authorization of MCGM. In respect of such reconstruction appellant cannot claim any indulgence or protection.

8. The learned counsel for the respondent no.2 points out that this is case were there are six illegal and unauthorized constructions. However, only one set of documents were furnished in reply to the notices issued by the MCGM. He points out that even this one set of documents was by no mean sufficient to establish legality of the suit structures.

9. For the aforesaid reasons this appeal is dismissed. Interim order, if any, stands vacated. There shall be no order as to costs.

10. At this stage the learned counsel for the appellant seeks for extension of interim relief for the period of four weeks. The learned counsel for the respondents points out that ad-interim was obtained at the stage of production and the same has simply continued. Looking into the conduct of the appellant in the past this is not a case where any further indulgence shown to the appellant. Accordingly, the request for extension of ad-interim relief is not granted.

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