

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**CIVIL APPLICATION NO.1697 OF 2017**  
**IN**  
**FIRST APPEAL (ST) NO.15222 OF 2017**

|                                          |                |
|------------------------------------------|----------------|
| Kishanlal Udaylal Jain                   | ...Applicant   |
| <i>Versus</i>                            |                |
| Municipal Corporation of Gr Mumbai & Ors | ...Respondents |

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**Mr Pradeep Thorat**, *for the Applicant.*  
**Mrs Madhuri More**, *for MCGM/Respondent No.1.*  
**Mr Roop M Vasudeo**, *for Respondents Nos.2 to 4.*

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**CORAM: G.S. PATEL, J**  
**DATED: 22nd June 2017**

**PC:-**

1. The Appeal is against an order dated 2nd May 2017. The Plaintiff has come in Appeal. His suit challenged the notice dated 3rd November 2011 under Section 351 of the Mumbai Municipal Corporation Act, (“MMC Act”) and an impugned order dated 7th December 2011 passed by the Municipal Corporation Greater Mumbai (“MCGM”). By this notice and order, the MCGM claimed that the front Room No.4A admeasuring 10’ X 9” and rear room admeasuring 23’ X 6” by 10’ X 6” with a passage of 26’ X 6” and the toilet and WC admeasuring 35 sq. ft., making a total of 460 sq. ft. on the 4th Floor of Sutarwala Building at 103, Bora Bazar Street, Fort, Mumbai were both unauthorised. This is of some

importance, because today Defendants Nos. 2 to 4, the landlords, say only the rear portion was unauthorised.

2. The Plaintiffs led evidence. An MCGM Officer was also examined. Defendants Nos.2, 3 and 4, the landlords, did not give evidence.

3. Before me it is contended that there is a plan prepared by one Satish Kulkarni, an Architect of the Repair Board, which shows that the 4th Floor was a open terrace with no construction. This is disputed. The Plaintiff relies on another plan also of the same Satish Kulkarni but of a different year which does show the structure on the 4th Floor. It is unclear from the record how the Satish Kulkarni plan canvassed by the landlords entered evidence, or whether in fact it ever did enter evidence. Satish Kulkarni himself was never examined. The landlord could not have introduced such a plan without examining its author or maker.

4. *Prima facie*, this approach seems to have permeated the entire judgment. There is the most scanty discussion of the evidence. There is no analysis of the oral testimony. There are documents shown to me today in the compilation that *prima facie* indicate the existence of some structure on the 4th Floor. These include Exhibit 24 in evidence, Exhibit 15 in evidence, Exhibits 16 and 17 in evidence, and perhaps most importantly, the registered document at Exhibit 18. This is the document by which Defendants Nos.2 to 4 bought the property. The Second Schedule to this registered conveyance shows the name of the Plaintiffs against an area of 720 sq. ft. on 4th Floor. At the very least, this document required to be

considered in the impugned judgment. The Trial Court ought to have considered whether the landlords had explained this undisputed and indisputable entry in their own title documents and if not what the consequences of that omission might be.

5. All this, of course, will be consider at the time of final hearing of the Appeal. It is of immediate relevance in the Civil Application only in the context of whether there should be an interim order protecting the possession of the Appellant/original Plaintiff. *Prima facie* on the record as it correctly stands there is nothing but inconsistency alleged by the landlords. According to MCGM, it is for every tenant to have with him copies of sanctioned plans although the MCGM itself routinely throws up it hands and says it has no records. The sanctioned plan will be with the building owner or with the sanctioning authority, never with the tenant. As far as the landlords are concerned, in this case, even they do not have a copy of the sanctioned plan. They dispute the correctness of MHADA plan, another inconsistency, for it can hardly be suggested that MHADA reconstructed illegally. The landlords say they have assessment orders that do not show construction on the rear portion of the 4th floor. This seems to be inconsistent with the impugned notice, and the impugned judgment does not squarely address this either. What is pointed out about the assessment orders is not so easily reconciled with the registered documents of title to which I have referred.

6. I find however that while the Appellate Court will have to necessarily examine all this at the final hearing, until then the Appellants' possession of the 4th Floor premises will have to be

protected. It will however be made clear that there will be no further extension or construction of whatsoever nature by the Appellant in regard to the 4th Floor premises and he will be restricted to those portions that he has claimed in the plaint and nothing further. Therefore, I will grant the relief sought in the Civil Application which is made absolute in terms of prayer clause (a):

“(a) That pending the hearing and final disposal of the present appeal, the Respondent No.1, their officers and servants be temporarily restrained by an order of Injunction of this Hon’ble Court from demolishing or pulling down or removing the suit premises or any portion thereof i.e. front room No.4A admeasuring 10’ X 10’-9” and rear room No.4B admeasuring 23’-6” X 10’-6” with passage admeasuring 26’-6” and toilet and WC admeasuring 35 sq. ft. i.e. total 416 sq. fts. on 4th floor Sutarwala Building at 103, Bora Bazar Street, Fort, Mumbai 400 001 in pursuance of a Notice bearing No.A/BF-III/351/932/BLDG-2011 dated 3rd November, 2011 issued under Section 351 of MMC Act and order bearing No.ASST.C/A/0721329381/BLDG dated 7th December, 2011 passed by the Assistant Commissioner, A/Ward of the Respondent No.1.”

7. The Civil Application is disposed of in these terms. No costs.

**(G. S. PATEL, J.)**