

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

**APPEAL FROM ORDER NO.23417 OF 2017
with
CIVIL APPLICATION (STAMP) NO.23418 OF 2017**

Shri Baleshwarprasad R. Chaudhary ... Appellant

Vs.

Municipal Corporation of Greater Mumbai ... Respondent

Mr.Vikas Kumar R. Srivastava for the Appellant
Ms.Madhuri More for Respondent

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: SEPTEMBER 18, 2017**

P.C. :

1. This Appeal from Order is directed against the order dated 3.8.2017 passed by the learned Adhoc Judge, City Civil Court Borivali Division, Dindoshi, Mumbai, thereby dismissing the Notice of Motion No.639 of 2010 in L.C. Suit No.334 of 2010. The plaintiff has filed a suit for injunction against the defendant Corporation that the suit premises i.e., the galas, admeasuring 25'/65' known as Neelam Furniture, Azmi compound at Goregaon, is not to be disturbed and not to be demolished. So also, the record and proceeding in the notice dated 25.3.2009 and the order dated 15.1.2010 passed on it, be set aside and reversed.

2. The plaintiff is the owner of the suit premises jointly with one Hariprasad Chaudhary. It is the contention of the learned Counsel for the plaintiff that the notice for demolition for the unauthorised construction was to be given to both the owners and instead, notice was given to only one owner i.e., Hariprasad Choudhary and not the present plaintiff i.e., the Baleshwarprasad Choudhary. It is submitted that as the notice was not issued to the present plaintiff, he lost an opportunity to approach the Commissioner and put up his say in respect of legality of the suit structure. The learned Counsel has submitted that he is deprived of the opportunity of producing the relevant documents of the suit structure. The learned Counsel has further submitted that the suit structure is a residential cum commercial premises which he had purchased in the year 1994 from his predecessor in title. This being a residential premises, the trial Court has erred in putting a yardstick of existence prior to the datum line of 1.4.1962. He submitted that the trial Court ought to have considered this aspect.

3. Learned Counsel for the Corporation has submitted that the suit premises was purchased in 1994. She relied on assessment bill issued by the Corporation in respect of the suit premises which

she submitted that it discloses that the AC shed stood in the joint names of Baleshwarprasad Chaudhary and Hariprasad Chaudhary. She submitted that however, the AC shed was changed and unauthorised construction was made and, therefore, the Corporation gave notice to one of the owners. She further submitted that the documents produced by the co-owner were considered by the Corporation and thereafter a reasoned order was passed on 15.1.2010 by the Assistant Commissioner, P-South ward.

4. Heard submissions. It is true that the notice is not given to the plaintiff. However, the documents in respect of the suit premises were submitted by the co-owner. The notice is obviously given in respect of the suit structures. It is an unauthorised construction and the documents pertaining to that structure were considered by the Corporation. Moreover, the trial Court at the time of hearing of the Motion has independently given a thought about the documents which were produced by the plaintiff i.e., the present appellant and has observed that not a single document showing that the structure was in existence prior to 1962 is produced. Undoubtedly, it is a commercial premises. A furniture

shop is run by the appellant. On query, the appellant could not produce the documents showing the existence of suit structure prior to 1962 and, therefore, I am of the view that the order passed by the learned Judge cannot be faulted with and hence, the appeal is hereby dismissed.

5. The appellant wants to challenge this order before the hon'ble Supreme Court and hence seeks stay of the order. Accordingly, stay of this order is granted upto 31st October, 2017.

(MRIDULA BHATKAR, J.)