

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

**APPEAL FROM ORDER (ST.) NO. 33589 OF 2017
WITH
CIVIL APPLICATION (ST.) NO. 33591 OF 2017
IN
APPEAL FROM ORDER (ST.) NO. 33589 OF 2017**

Sushil Rajaram Ghosalkar

...Appellant/
Applicant

Versus

Mumbai Municipal Corporation for Greater
Mumbai & Anr.

...Respondents

.....

Mr.Surel S. Shah i/b. Mr.Ram Vgrah Singh for the Appellant.
Mrs. Madhuri More for the Respondents/ Municipal Corporation.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATE : DECEMBER 08, 2017**

P.C.:

1. This Appeal from Order is directed against the order dated 21st November, 2017 passed by the learned Judge, City Civil Court, Borivali Div., Dindoshi, Mumbai thereby refusing the ad-interim temporary injunction in Notice of Motion No. 3573 of 2017 in L.C.Suit No. 2995 of 2017.

2. The appellant/plaintiff has filed the suit challenging the notice dated 22nd April, 2017 issued under Section 351 of the Mumbai Municipal Corporation Act and also the order dated 18th October, 2017 passed by the Designated Officer of the Municipal Corporation thereby confirming the said notice.

3. After hearing the submissions of learned counsel for both the parties, it is found that the notice is given only in respect of the first floor, as alleged structure is constructed without taking permission of the Municipal Corporation and it is unauthorized. Notice is not in respect of a shop and the residence, which is as per the Municipal Corporation is only on the ground floor.

4. Learned counsel for the appellant has relied on the assessment bill dated 23rd April, 2016 for the assessment year 2016-2017. The first date of assessment is shown as 31st March, 1961. Thus, it shows that the suit structure was in existence prior to 31st March, 1961.

5. No description of the suit structure is mentioned in the assessment bill. So, it is difficult for the Court to gather the nature of the structure, which is assessed by the Municipal Corporation as to whether it is only for the ground floor or ground + 1 or 2 storied.

6. Learned counsel for the Municipal Corporation while assisting the Court, has submitted that alongwith the assessment bill, one assessment extract is prepared by the concerned Inspector. She has further submitted that in the assessment extract, the description of the property is always mentioned. She has further submitted that such assessment extract of the suit property is not produced by the plaintiff, though the burden to show the suit structure is authorized is on the plaintiff.

7. The assessment extract is prepared by the Inspector of the Municipal Corporation so obviously such extract is in the custody of the Municipal Corporation unless the copy of the assessment extract is routinely furnished by the Inspector to the occupants. Hence, if at all such assessment extract exists and is available with the Municipal Corporation, then the Municipal Corporation to produce the assessment extract of the suit structure to enable the trial Court to

ascertain whether the first floor was in existence in the year 1961 or it is subsequently constructed and it is unauthorized. In view of the above, I set aside the order dated 21st November, 2017 passed by the learned Judge, City Civil Court, Borivali Div., Dindoshi, Mumbai and allow the Appeal with following order :

- (i) The Municipal Corporation not to take any coercive action against the appellant pursuant to the notice and the order in respect of the suit structure i.e. the first floor till 27th February, 2018.
- (ii) The Notice of Motion, which is scheduled on 15th March, 2018 before the trial Court, is to be preponed and the parties to appear before the trial Court on 15th December, 2017 at 2.45 p.m.
- (iii) Parties to complete their proceedings in Notice of Motion on or before 15th January, 2018.
- (iv) The trial Court to decide the matter on or before 27th February, 2018.

8. Learned counsel for the appellant has submitted that the assessment bill is in respect of the shop and house.

9. With this, Appeal from Order is allowed and is disposed of accordingly. Civil Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)