

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER st. NO.33731 OF 2017
WITH
CAAST./33732/2017**

Divesh Trivedi

... Appellant

Vs.

Municipal Corporation of Greater Mumbai

... Respondent

Mr.P.V. Rachh for the Appellant

Mrs.Madhuri More for Respondent / Corporation

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: DECEMBER 18, 2017

P.C.:

1. This appeal is directed against the order dated 24.10.2017 in the draft Notice of Motion in L.C. Suit No.2727 of 2017 thereby rejecting the ad-interim relief. It pertains to the notice issued by the Corporation dated 23.8.2017 informing that the suit structure is on the footpath and hence, it is to be removed.

2. The learned Counsel for the appellant submitted that the suit structure is in existence since last many years. It is not on the footpath. The suit structure is at the end of the road and there is some portion on footpath outside the door of the suit structure. He

submitted that the Corporation has accepted the ground rent. He submitted that by letter dated 19.5.2011, the Assistant Engineer (M-Ward) has communicated that there is no unauthorised work carried out in the premises after inspecting the site. He submitted that the appellant is not aware of the prevailing policy in respect of the suit structures. He further submitted that no notice was ever given to the plaintiff in respect of his structure.

3. It is the case of the Corporation that pursuant to the order passed by the High Court in Public Interest Litigation, notices in respect of unauthorised structures on footpath are issued.

4. I have perused the plaint, the pleadings and the impugned order. Acceptance of ground rent itself is not a proof of treating the structure as unauthorised. It appears *prima facie* that the structure is on the footpath and cannot be continued. However, it is advisable for the Corporation to furnish copy of the policy to the appellant. The appellant is directed to produce the documents as per the requirements of the policy in respect of the structures on footpath. I am informed that the Notice of Motion is fixed in the second week of February, 2018 by the trial Court. The Corporation to file an affidavit in reply on that day and thereafter the trial Court to decide the Notice

of Motion on or before 15.3.2018. Till then, the Corporation shall not take any coercive steps in respect of the suit structure. It is made clear that this time is given to the appellant to enable him to be aware of the policy of the Corporation in respect of the structures on footpaths and also as a breathing time to make other arrangements.

5. Appeal from Order is dismissed accordingly.

6. In view of the disposal of the Appeal from Order, Civil Application also stands disposed of.

(MRIDULA BHATKAR, J.)