

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
APPEAL FROM ORDER (ST.) NO. 35830 OF 2016  
AND  
CIVIL APPLICATION (ST.) NO. 35831 OF 2016

Mr. Zaiul Haq Zainul Haq

.. Appellant .

vs.

Municipal Corporation of Greater  
Mumbai

.. Respondent.

Mr. Gauraj Shah i/b Mr. S.P. Chavan for the Appellant.

Mrs. M.R. Bhoir for the MCGM- Respondent.

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

**DATE : 23 & 24 JANUARY 2017**

**P.C. :-**

1] Heard Mr. Shah learned counsel for the appellant and Mrs.M.R. Bhoir, learned counsel for the Municipal Corporation of Greater Mumbai (MCGM).

2] With the consent of and at the request of learned counsel for the parties, this appeal is disposed of finally.

3] The challenge in this appeal is to the order dated 23 December 2016, by which, learned trial Judge has declined ad-interim relief to the appellant (plaintiff).

4] Mr. Shah, learned counsel for the appellant, submits that the impugned order is unreasoned and voluminous documents produced on record by the appellant have not even been considered by learned trial Judge. Mr. Shah submits that in the year 2012 the MCGM had issued notice under section 351 of the Municipal Corporation Act,

1888 (said Act), in which, it was alleged that only the structure on the first floor was unauthorised. Nothing was stated in the said notice with regard to the ground floor structure. The appellant submitted his reply, but no decision was taken in the matter. Instead, in the year 2015, another notice under section 351 of the said Act has been issued alleging that both the ground floor structure as well as the first floor structure are illegal and unauthorised. Mr. Shah submits that there are several technical flaws in the issue of notice. Mr. Shah submits that there was no compliance with the natural justice and fair play before the impugned notice was issued. On this ground, Mr. Shah submits that the ad-interim relief was necessary and learned trial Judge has erred in declining the same.

5] Mrs. Bhoir, learned counsel for the MCGM, submits that in 2012 notice, the ground floor structure was found to be ad-measuring 11' x 13'. However, in 2015 it was noticed that there are extensions to the ground floor structure and the first floor structure which is patently unauthorised. She submits that there is really no case made out to interfere with the impugned order.

6] Insofar as the ground floor structure is concerned, the issue as to whether there are any unauthorised extensions made or not is an issue which requires consideration. However, in the light of several documents produced by the appellant, it cannot be said that the ground floor structure is *per se* an unauthorised or illegal structure. In 2012 notice, the MCGM had objected only to the first floor structure and raised no issues with regard to the ground floor structure. On the ground that the appellant has not produced the

tenancy agreement, there was no reason to decline ad-interim relief insofar as the ground floor structure is concerned. The appellant has produced several documents, which, in fact, have been referred to in the impugned order and on the basis of same, some protection was due insofar as the ground floor structure is concerned. The impugned order is therefore, modified and pending disposal of the notice of motion, the respondents are restrained from demolishing the ground floor structure.

7] Insofar as the first floor structure is concerned, the appellant has failed to produce any material or documents to establish that the same is authorised construction. In fact, at the prompting of Mr.Ziaul Haq Zainula Haq, the appellant himself, learned counsel for the appellant pointed out the electricity bill dated 4 August 2015, which, according to the appellant, is an electricity bill separately issued in respect of the first floor structure. The electricity bill does not render the first floor structure legal. That apart, if it was the case of the appellant that right from the year 1947, the structure in question comprises both ground as well as first floor, it is not understood as to why in the year 2015 some separate electricity bill was issued in respect of the first floor structure. In fact, this document fortifies the case of the MCGM that the first floor structure is totally unauthorised and constructed much later without obtaining any permission from the MCGM. None of the documents produced either make any reference to the first floor structure or support the construction of the first floors structure. The documents in respect of the ground floor structure cannot be passed of in order to suggest the semblance of authority in respect of the first floor structure.

8] In fact, *prima facie* it appears that the appellant has not approached the trial court with clean hands. However, considering that the appellants carry out the business of tailoring from the ground floor premises and at least *prima facie* since they have been doing so for last several years, it will not be appropriate to non-suit the appellant on this ground. However, the appellant has made out no *prima facie* case whatsoever in respect of the first floor structure and therefore, the impugned order, to the extent it declines protection to the first floor structure need not be interfered with.

9] The appeal is partly allowed to the aforesaid extent. There shall, however, be no order as to costs.

10] The trial court to decide the notice of motion on its own merits and in accordance with law.

11] The civil application in this appeal does not survive and the same is disposed of accordingly.

12] After this order was dictated in the open court, learned counsel for the appellant, on the basis of instructions from the appellant, stated that the appellant desires to apply for regularization of the first floor structure and some protection be granted until the application for regularisation is considered by the MCGM. This court enquired with learned counsel for the appellant as to whether in such a situation, it can be recorded that the appellant concedes that the first floor structure is illegal and unauthorised. In order to enable learned counsel for the appellant as

well as the appellant himself, who is present in the court to reflect further, the matter is posted tomorrow, i.e., 24 January 2017.

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

**Date: 24/1/2017**

13] In pursuance of the aforesaid, the matter was called out today, i.e., on 24 January 2017 at about 11.10 a.m. Learned counsel for the appellant, on the basis of instructions of the appellant, states that the appellant, concedes that the first floor structure is illegal and unauthorized but that the appellant shall apply for regularization to the MCGM within a period of one week from today. Learned counsel submits that if the appellant applies for the regularization, some protection may be granted in respect of the first floor construction which is already conceded as being illegal and unauthorized.

14] Ms.Bhoir, learned counsel for the respondent-MCGM states that if the application for regularization is made within one week from today, the same will be disposed of in accordance with law and on its own merits within a period of four weeks from today. Ms.Bhoir further states that she is unable to make a statement that if the period of four weeks that no action will be taken in terms of impugned notice.

15] Now that the appellant has conceded that the first floor structure is illegal and unauthorized and has agreed to apply for regularization, it is only just and proper that for a period of five

weeks from today, no action is taken against the first floor structure in pursuance of the impugned notice. Further, the MCGM, is directed to dispose of application for regularization within a period of four weeks from the date of its receipt without fail. In case, the application for regularisation is not made within one week or is rejected, the appellant to remove the first floor structure within a period of 15 days, failing which, the MCGM shall be at liberty to remove the same in pursuance of the notice issued.

16] Mrs. Bhoir has, however, clarified that the MCGM maintains that even the ground floor structure is illegal and unauthorized and this issue will be contested before the trial court. The MCGM, in such circumstances, is permitted to dispose of the application for regularisation, without prejudice to such contentions.

17] The appeal is partly allowed to the extent indicated. There shall be no order as to costs.

18] All concerned to act on the basis of authenticated copy of this order.

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

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