

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

**APPEAL FROM ORDER NO. 325 OF 2018
WITH
CIVIL APPLICATION NO. 427 OF 2018
IN
APPEAL FROM ORDER NO. 325 OF 2018
WITH
APPEAL FROM ORDER (ST.) NO. 21133 OF 2018**

Bharat Harilal Shah V/s. The Municipal Corporation of Greater Mumbai & Anr.	... Appellant
	... Respondents

- Mr.Prashant G. Pandey for the Appellant.
- Mrs.Madhuri More for Respondent No.1-MCGM.
- Mr..A.R.. Shaikh for Respondent No.2.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 24th SEPTEMBER, 2018.

P.C. :

1] This Appeal takes an exception to the order dated 19th December, 2017, passed by the City Civil Court, Dindoshi, Mumbai, thereby dismissing Notice of Motion No.4024 of 2017 filed in L.C. Suit No. 2914 of 2017.

2] The said Notice of Motion was taken out by the present Appellant restraining Respondent No.1-Corporation from taking any action in pursuance of the notice dated 4th October, 2017, issued under Section 351 of the Mumbai Municipal Corporation Act, 1888 (*for short "MMC Act"*).

3] The case of the Appellant is that he is a tenant in respect of the suit premises as mentioned in the impugned notice issued under Section 351 of the MMC Act, namely, "the shed with A C Sheet roof and M.S. Angles admeasuring 3.61m x 9.17m with average height of 2.45m in compulsory open space of building premises".

4] It is the contention of the Appellant that the said premises are in existence since 01/06/1962 or since much prior thereto. He is having the Municipal Assessment and Electricity Bills thereof to show that the said shed is in existence since last several years. He has not carried out any alteration or addition to the said shed. Even in the Agreement dated 15th July, 1975, there is mention of this shed. Hence, according to him, the impugned notice issued by the Respondent-Corporation calling upon to remove the said shed on the ground that it is illegal or unauthorized and asking the Appellant to remove or demolish the same, is totally illegal and hence, the Respondent-

Corporation needs to be restrained from taking any action in pursuance of the said notice.

5] This Notice of Motion came to be resisted by the Respondent-Corporation contending *inter-alia* that the suit structure is not reflected in the approved plan of the said building dated 19/07/1970. The copy of the assessment extract or payment of the electricity bills cannot be sufficient to prove the existence of the structure, which is at present standing at the site, as legal or authorized. Moreover, it was submitted that all the documents on which the Appellant has placed reliance were considered by the Designated Officer of the Corporation, when he had passed the order dated 09/11/2017 under Section 351 of the MMC Act. Therefore, the Appellant has no *prima-facie* case to get the relief of interim injunction.

6] After considering the submissions advanced at bar by learned counsels for both the parties and after perusal of the documents produced on record, the trial Court was pleased to dismiss the Notice of Motion.

7] While challenging the impugned order of the trial Court, the same submissions, which were advanced before the trial Court, are

again pressed in to service by learned counsel for the Appellant. It is submitted that when the existence of the suit structure can be found reflected in the Assessment Extract and the date of First Assessment is 01/06/1962, therefore it follows that the suit structure is in existence since prior to the datum line. In addition to the same, there are also the copies of the Agreements dated 15/07/1975 and 19/07/2002 and the Receipts of the Rent paid by the Appellant. Therefore, according to learned counsel for the Appellant, the suit structure is required to be protected and the action initiated and undertaken by the Respondent-Corporation being only at the behest of the landlord, who is not successful in evicting the Appellant, being *malafide*, the impugned notice needs to be quashed and set-aside.

8] Per contra, learned counsel for the Respondent-Corporation has supported the impugned order by pointing out to various documents and the detailed order passed by the Designated Officer under Section 351 of the MMC Act.

9] In the considered opinion of this Court also, once the Respondent-Corporation has categorically alleged that the construction of the shed is illegal and unauthorized, the burden was naturally shifted upon the Appellant to prove that the said structure was shown in the sanctioned plan of the Bharat Niwas Building.

10] However, the Appellant has not produced any sanctioned plant to that effect. Conversely the copy of the sanctioned plan which is produced by the Respondent-Corporation clearly goes to show that no such structure is found reflected in the sanctioned plan. Therefore, it follows that the said construction is illegal and unauthorized, as it is constructed without obtaining permission from the Municipal Corporation.

11] Even as regards the contention of the Appellant that the First Assessment of this structure for Property Tax or Electricity Bills was since 01/06/1962, learned counsel for the Respondent-Corporation points out that the datum line for tolerating the commercial structure is 01/04/1962. Therefore, this contention also cannot be available in any way to the Appellant, assuming that in the first assessment also the suit structure was shown. It is apart that the trial Court has rightly considered that according to details and descriptions of the capital value dated 23/05/2015 only four commercial structures were shown on the suit site and rest are all residential premises. Therefore, if as per the Appellant, he is using this structure for commercial purpose of the garage, then, it was for him to show that the existence of the structure is shown in the details of the capital value.

12] Moreover, the photographs produced on record and the order passed by the Designated Officer shows that the structure is in compulsory open space of the building. The rent receipts or the Agreements on which much reliance is placed also go to show that what was given to the Appellant was Shop No.5 with the open space opposite to it. Hence, it follows that the construction was made subsequently without any permission or getting the plan sanctioned from the Respondent-Corporation.

13] In such situation, illegal and unauthorized construction cannot be protected, at-least by the order of this Court. The trial Court has after considering the entire material placed on record rejected the relief of interim injunction, restraining the Municipal Corporation from taking any action, in pursuance of the detailed order passed by its Designated Officer under Section 351 of the MMC Act. After giving an opportunity of hearing to the Appellant both in the trial Court and in this Court also, the Appellant has failed to prove the legality of the construction of the structure. Hence, the Appeal holds no merits and stands dismissed.

14] At this stage, learned counsel for the Appellant seeks extension of the order of ad-interim relief passed by this Court in

January 2018.

15] Learned counsel for the Respondent takes strong objection thereto. In my considered opinion also, for the reasons stated here-in-above, such interim relief cannot be extended. Hence, this request is rejected.

16] In view of disposal of the Appeal from Order No.325 of 2018, the Appeal from Order (St.) No.21133 of 2018 and Civil Application No.427 of 2018 does not survive, hence stand disposed off.

[DR.SHALINI PHANSALKAR-JOSHI, J.]