

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER (ST) NO. 8508 OF 2018
with
CIVIL APPLICATION (ST) NO. 8509 OF 2018
IN
APPEAL FROM ORDER (ST) NO. 8508 OF 2018

Salim Chand Miyan

..Appellant

v/s.

The Municipal Corporation of
Gr. Mumbai.

..Respondents

Mr. B.P. Shukla for the Appellant/Applicant

Mrs. Madhuri More for the Respondent-BMC.

Mr. Pravin Vasave- Designated Officer from BMC present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 23rd MARCH, 2018.

P.C.

1. Heard. With consent of the parties, the matter is taken up for hearing at the stage of admission.
2. Mrs. More, the learned Counsel for the respondent-Municipal Corporation submits that the Corporation has partly demolished the structure which is the subject matter of the Notice of Motion dated 2nd March, 2013. She has submitted that the Corporation will not

demolish any structure which is on the ground floor or on the first floor and /or any structure which is not the subject matter of the notice/order. She submits that the subject structure which is demolished is on the second floor.

3. It is seen that the petitioner, appellant herein had earlier challenged the Notice of Motion dated 2nd March, 2013 in Writ Petition No.2515 of 2014. The said writ petition was dismissed by order dated 9th June, 2017, wherein in para 2 of the order the Division Bench has observed thus:

“2. We have considered the submission. It is not the case made out either in the Writ Petition or in the reply to the notice that there is no construction made on the second floor of R.C.C. Columns, Beams, ladi Coba and Bricks. The contention specifically raised in the reply to the notice is based on assessment record a copy of which is annexed as Exh.A to the petition, We have perused the said document relied upon by the Petitioner himself. It describes the structure subject matter as made up of “C1 Tiled and A C Chawl”. It is not the case of the petitioner that the description of the structure in the document relied upon by him is erroneous. Thus, going by the document relied

upon by the petitioner himself what was in existence before the datum line was not a structure made up of R.C.C. Columns, Beams etc. Therefore, going by the document produced by the Petitioner, the case made out that the structure subject matter of impugned notice is a protected structure being in existence prior to datum line is false”

4. In the light of the above observations, the contention of the learned Counsel for the appellant that the structure was earlier existing cannot be accepted. In view of the above, I am not inclined to grant any interim relief.

5. Under the circumstances and in view of the discussions supra, there is no merit in the appeal. The Appeal from Order is dismissed. The parties are directed to complete pleadings within four weeks. The learned Judge, City Civil Court at Gr. Mumbai is directed to dispose of the Notice of Motion No.1135 of 2018 within eight weeks.

6. Civil Application (st) No. 8509 of 2018 is disposed of in view of disposal of the Appeal from Order.

(ANUJA PRABHUDESSAI, J.)