

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO.717 OF 2015
WITH
CIVIL APPLICATION NO. 874 OF 2015
IN
APPEAL FROM ORDER NO. 717 OF 2015
WITH
APPEAL FROM ORDER NO. 718 OF 2015
WITH
CIVIL APPLICATION NO. 875 OF 2015
IN
APPEAL FROM ORDER NO.718 OF 2015
WITH
APPEAL FROM ORDER NO. 719 OF 2015
WITH
CIVIL APPLICATION NO. 876 OF 2015
IN
APPEAL FROM ORDER NO. 719 OF 2015**

Parashuram Bhaskar Mali

...Appellant

Versus

The Municipal Corporation of Greater Mumbai
& Anr.

...Respondents

.....

Mr.Rakesh M.Pandey for the Appellant in all AO's.
Mrs.Madhru More for Respondent No.1/ Municipal Corporation.
Mr. Rakesh Agrawal for Respondent No.2.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATE : JANUARY 12, 2018.**

P.C.:

1. The parties in these three Appeals from Order are one and the same. These Appeals are filed against the orders dated 2nd June, 2015 passed by the learned Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai thereby refusing the ad-interim relief in respective suits. Hence, these three Appeals from Order are also disposed of by one common order.

2. Respondent no. 1/ Municipal Corporation has given three notices in respect of three unauthorized structures and hence, these three notices are the subject matter of the three suits filed by the appellant/plaintiff against the Municipal Corporation. Respondent no.2 is a landlord. Civil Application to implead the landlord as a party respondent was allowed by this Court. The Chamber Summons filed by respondent no.2/landlord in respective suits is pending before the trial Court.

3. The learned Counsel for the appellant/plaintiff has submitted that the orders dated 2nd June, 2015 passed by the trial Court rejecting the ad-interim relief are bad in law. The learned Judge of

the trial Court has not properly appreciated the factual position as well as documentary evidence produced by the appellant/plaintiff. He has further submitted that the Municipal Corporation had issued three notices in respect of one structure and the measurements of the impugned structure/ structures are incorrect and hence disputed by the appellant/plaintiff. The description of the suit structure is also not clear. He has further submitted that the suit structure is in fact in existence prior to 1962. In order to support his claim, the appellant/plaintiff has filed the Assessment Bill of the suit property. The learned Judge of the trial Court has erroneously held that the Assessment Bill is not prior to 1960-62. By pointing out the said Assessment Bill, he has submitted that the date of the first assessment in fact is not mentioned in the said Assessment Bill. The Assessment Bill is issued by the Municipal Corporation itself and, therefore, it is the duty of the Municipal Corporation to show the date of the first assessment. He has relied on the city survey map of the suit property. He has further submitted that the trial Court has not considered this map properly. In the city of Bombay, earlier the plot was numbered as per survey number and subsequently, it was numbered as city survey. He has further submitted that the city survey was made in the year 1961-62 and this plot is of 1962. He

has further submitted that the suit structure is in existence prior to 1962 and it is to be protected.

4. The learned Counsel for the Municipal Corporation while opposing these Appeals, has relied on the affidavit of Mr. Padmakar Ganpati Chavan, Assistant Engineer, R/Central Ward office, Borivali (W), Mumbai wherein he has specified the description of these unauthorized structures, which are in three portions and the notices were given to the respective unauthorized structures. The Designated Officer of the Municipal Corporation has considered all the documents produced by the appellant/plaintiff. She has submitted that as per Town Planning Scheme, the land on which the suit structures are standing is reserved for the Municipal Primary School.

5. The learned Counsel for respondent no.2 i.e., landlord has submitted that respondent no.2 is required to handover this vacant land to the Municipal Corporation for the purpose of construction of the Municipal Primary School as shown in the Town Planning Scheme.

6. Heard submissions. Perused the impugned orders. Also perused all the documents, which are pointed out by the learned Counsel for the appellant. The order dated 8th May, 2015 passed the Designated Officer is exhaustive, as he has considered all the documents in the finding. No document is produced by the appellant before this Court to prove that the suit structures are in existence prior to 1962 or any approved plan is shown to establish that the suit structures are authorized and constructed after obtaining permission of the Municipal Corporation. The submission of the learned Counsel for the appellant that the burden is on the Municipal Corporation to show the first date of the assessment is not correct. The submission of the city survey plan also cannot be accepted. Hence, I am of the view that no interference is required in the orders dated 2nd June, 2015 passed by the learned Judge of the trial Court. Notices of Motion in respective suits are fixed on 23rd February, 2018 before the trial Court. The trial Court to proceed with the matter. Hence, Appeals from Order are dismissed.

7. Civil Applications are also accordingly disposed of.

8. The learned Counsel for the appellant prays that this order be stayed and the earlier interim relief to continue, as he wants to challenge this order before the Hon'ble Supreme Court.

9. I do not find any good ground to continue interim stay and stay this order, hence rejected.

(MRIDULA BHATKAR,J.)