

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

**APPEAL FROM ORDER NO. 147 OF 2015
WITH
CIVIL APPLICATION NO. 186 OF 2015
WITH
CIVIL APPLICATION NO. 485 OF 2018**

Zulfiqar Ali Shaikh	...	Appellant
V/s.		
The Municipal Corporation of Greater Mumbai	...	Respondent

- Mr.Javed Khan Akhtar for the Appellant.
- Mrs.Madhuri More for the Respondent-Corporation.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 15th OCTOBER, 2018.

P.C. :

1] Heard learned counsel for the Appellant and learned counsel for the Respondent-Corporation.

2] This Appeal takes an exception to the order dated 12/11/2014 passed by the City Civil Court, Mumbai, thereby dismissing the Notice of Motion No.2745 of 2010 filed in L.C. Suit No.2464 of 2010.

3] The said Notice of Motion was taken out by the Appellant herein seeking relief of temporary injunction restraining the

Respondent-Corporation from taking any action in pursuance of the notice issued under Section 354-A of the Maharashtra Municipal Corporation Act (*for short*, “*MMC Act*”) and the order passed thereon.

4] As per the contention of the Appellant, he is in occupation of the suit premises since last 70 years and the suit premises is in existence since prior to 1960. He is paying the electricity charges and he has produced the electricity bill of the year 1995. According to him, he has applied for permission to carryout the requisite repairs and as can be seen from the order passed by the Competent Officer, such permission was considered, but despite that, the order of stop work is being passed and hence, it is necessary to restrain the Respondent from taking any action in pursuance of the said notice.

5] However, as rightly pointed out by learned counsel for the Respondent, there is more than sufficient material on record to show that though the earlier structure, which may be of more than 2 or 3 floors, the Appellant has undertaken totally new construction. When the Officers visited the site, it was in progress, the *panchanama* of the said construction which was in progress was drawn at the site. Not only that, even the complaint under Section 43 read with Section 52 of the MRTP Act is also lodged against the persons who were found carrying out the construction. Letter to that effect was also written to

the Appellants.

6] These documents thus *prima-facie* clearly go to show that in the place of existing construction, new construction is undertaken. For showing the legality and validity of the said construction, the permission and the sanctioned plans was required to be produced on record. However, no such document is produced. The Appellant has relied upon some plan seeking permission to carryout repairs which is of the year 1974. Such document can hardly be useful to prove the legality and validity of the construction, which is undertaken in the year 2010. The trial Court has therefore rightly dismissed the Notice of Motion and in Appeal from Order, no interference is warranted. Hence, the Appeal stands dismissed.

7] At this stage, learned counsel for the Appellant requests for stay to the implementation and operation of this order for two weeks. Learned counsel for the Respondent-Corporation strongly resists the said request.

8] Considering the facts as stated above, which clearly indicate that the construction undertaken is apparently/patently illegal and unauthorized, there is no question of staying the order of this Court. Hence, the request stands rejected.

9] In view of disposal of the Appeal, nothing survives in the Civil Application(s), hence stand disposed of.

[DR.SHALINI PHANSALKAR-JOSHI, J.]