

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

**APPEAL FROM ORDER NO. 902 of 2015
WITH
CIVIL APPLICATION NO. 1094 OF 2015
IN
APPEAL FROM ORDER NO. 902 of 2015**

Anita Chandrakant Adagale	..Appellant
v/s.	
Municipal Corporation of Gr. Mumbai	..Respondent

**WITH
APPEAL FROM ORDER NO. 903 of 2015
WITH
CIVIL APPLICATION NO. 1095 OF 2015
IN
APPEAL FROM ORDER NO. 903 of 2015**

Mohammed Ebrhaim Usman Gani Khan	..Appellant
v/s.	
Municipal Corporation of Gr. Mumbai	..Respondent

**WITH
APPEAL FROM ORDER NO. 905 of 2015
WITH
CIVIL APPLICATION NO. 1097 OF 2015
IN
APPEAL FROM ORDER NO. 905 of 2015**

Nila Sevanti Mehta	..Appellant
v/s.	
Municipal Corporation of Gr. Mumbai	..Respondent

**WITH
APPEAL FROM ORDER NO. 906 of 2015
WITH
CIVIL APPLICATION NO. 1098 OF 2015
IN
APPEAL FROM ORDER NO. 906 of 2015**

Jabiullah Mohamed Yasin Shah	..Appellant
v/s.	
Municipal Corporation of Gr. Mumbai	..Respondent

**WITH
APPEAL FROM ORDER NO. 907 of 2015
WITH
CIVIL APPLICATION NO. 1099 OF 2015
IN
APPEAL FROM ORDER NO. 907 of 2015**

Mrs. Nasreen D/o Naa Mansoor Ahmed & W/o Mohd.ebrahim Khan	..Appellant
v/s.	
Municipal Corporation of Gr. Mumbai	..Respondent

**WITH
APPEAL FROM ORDER NO. 908 of 2015
WITH
CIVIL APPLICATION NO. 1100 OF 2015
IN
APPEAL FROM ORDER NO. 908 of 2015**

Pramodkumar Motilal Morya	..Appellant
v/s.	
Municipal Corporation of Gr. Mumbai	..Respondent

Mr. M.L. Palav, Counsel a/w Mrs. Jayshree P. Thakkar for the Appellant.	
Mrs. M.R. Bhoir for the Respondent/B.M.C.	

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 20th MARCH, 2018.

P.C.

. The Appellants herein have challenged the order dated 29th June 2015, whereby the learned Judge of City Civil Court, Mumbai has dismissed the Notice of Motion No. 4266 of 2014 in L.C. Suit No. 2930 of 2014.

2. The Appellants who are the plaintiffs in the suit had sought to restrain the Municipal Corporation from removing the structures / shops situated in the suit building. The case of the Appellants is that they are the owners and tenants of the shop no. 3 situated at the rear side compound of Karim Building, 326, Grant Road, Mumbai.

3. The Respondent No. 1 Corporation had issued a notice dated 7th August, 2009 alleging that the appellants had carried out unauthorised construction. The Appellants have claimed that the said structures / shops are in existence prior to 1960. It is alleged that the earlier shed was divided into 6 rooms. The Appellants have claimed that they applied for permission to the Corporation and that the said permission was granted on 22nd June 2007. The Appellants have claimed that since structures were in existence prior to 1960, they are exempted from any action under the Mumbai Municipal Corporation Act, 1888 (for short "MMC Act").

4. The Respondent-Corporation has alleged that on receipt of complaint from Ali A. Namazi, it was found that the Appellants had constructed six shops. It is stated that the impugned notice was issued as the Appellants had failed to produce any documents to show that the structures were authorised and lawful.

5. The learned Trial Judge, after considering the material produced by the respective counsel, held that the Appellants have not made out any prima facie case. The learned Judge further held that the Appellants have failed to show that the said structures were in existence prior to 1960 and have thus failed to get exemption from action under Section 351 of the MMC Act. On the basis of the aforesaid findings, the learned Judge dismissed the Notice of Motion. Hence, the present appeal.

6. Heard learned counsel for the Appellant and learned counsel for the Respondent No. 1. The Appellants have produced before this court an application dated 9th August 1960, along with a plan which was submitted before the Corporation. In the light of the said documents produced by the Appellants, this Court by an order dated 30th July 2015 had directed the Respondent-Corporation to file affidavit-in-reply explaining whether they had received application dated 9th August 1960 filed by the Appellant-Plaintiff for tenantable repairs and, if yes, whether they have passed any order on that application. Pursuant to the said order, one Mr. Patil, Sub Engineer,

D/Ward, in the employment of the Respondent-Corporation, has filed an affidavit. The said affidavit does not disclose whether the application for repairs dated 9th August 1960 was received by the Municipal Corporation nor does it state that such permission was granted for repair of structures. He has stated that the letter dated 14th October 1960, which was addressed on behalf of the Corporation, makes a reference to that application dated 9th August 1960 for tenantable repairs to the existing shed adm. 48' 3" x 17'0" with the G.I. Sheet roof and Brick Masonery walls. The said letter, prima facie, indicates that the Corporation had given no objection to carry out the tenantable repairs to brick masonry shed.

7. The application dated 9th August 1960 and the letter dated 14th October 1960 prima facie indicate that the Appellants herein had sought permission to carry out the repairs and such permission was granted by the Corporation. Though the Respondent-Corporation has disputed genuineness of the said document, the said ground cannot be looked into at this stage and will have to be decided on merits until such time subject matter of the suit needs to be preserved.

8. It is also to be noted that the status quo order in respect of the subject structures is operating since 30th July 2015. It is also stated that the trial in the suit has already commenced. Hence, vacating the interim relief at this stage will render the suit infructuous.

9. In view of the above facts and circumstances of this case, the appeals are allowed. Both parties are directed to maintain status quo in respect of the suit structures till the disposal of the suit. The Trial Court is directed to dispose of the suit as expeditiously as possible and preferably within a period of one year from the date of this order.

(ANUJA PRABHUDESSAI, J.)