

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.730 OF 2017
ALONG WITH
CIVIL APPLICATION NO.979 OF 2017

Vadilal Kunverji Gada	 Appellant-Applicant
V/s.	
The Municipal Corporation of Greater Mumbai	 Respondent

Mr. Atharva Dandekar, I/by Mr. Jitendra J. Shah, for the Appellant-Applicant.

Mrs. Madhuri More for the Respondent-MCGM.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 17TH OCTOBER, 2018.

P.C. :

1. Heard Mr. Dandekar, learned counsel for the Appellant-Applicant, and Mrs. More, learned counsel for the Respondent-Municipal Corporation.

2. This Appeal takes an exception to the order dated 19th July 2017, passed by the City Civil Court, Dindoshi, Borivali Division, Mumbai, thereby dismissing Notice of Motion No.2329 of 2017 filed in L.C. Suit No.1421 of 2017.

3. The said Notice of Motion was taken out by the Appellant herein, restraining the Respondent-Municipal Corporation from taking any action in pursuance of the 'Notice' issued, under Section 354-A of the

Mumbai Municipal Corporation Act, 1888, on 24th April 2017 in respect of the suit premises being Shop No.1, admeasuring 1,600 sq.ft. carpet area on the ground floor and Room No.3, admeasuring 750 sq.ft. carpet area on the first floor of the building known as “Bhagirathi Bhavan”, situate at 47, J.P. Road, Near Navrang Cinema, Andheri (West), Mumbai 400 058.

4. The case of the Appellant is that, the notice alleges the unauthorized extension, which is not at all carried out by him and, therefore, he is not liable in any way for either removal of the said structure or for the liability for carrying out construction of the said structure and hence, the said notice is illegal, null and void and hence, Respondent-Municipal Corporation be restrained from taking any action in pursuance of the said notice.

5. Learned counsel for the Respondent-Municipal Corporation brings on record the photographs of the suit structure showing that, it is already demolished on 3rd August 2017. In view thereof, when the unauthorized structure itself, which was impugned in the notice, no more in existence, the question does not arise of protecting the said structure.

6. The Appeal, along with Civil Application thereto, therefore, having become infructuous, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]