

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO. 23301 OF 2018
WITH
CIVIL APPLICATION (STAMP) NO. 23305 OF 2018

Dev Shyamlal Gupta	..	Appellant
vs.		
The Municipal Corporation of Greater Mumbai	..	Respondents

Mr. Jitendra Shah for Appellant.
Ms Madhuri More for Respondents – MCGM.

CORAM : M. S. SONAK, J.
DATE: 14 AUGUST 2018

P.C :

1] Heard Mr. Shah, the learned counsel for the appellant and
Ms More, the learned counsel for the respondents.

2] The challenge in this appeal is to the order dated 1st August
2018 made by the learned trial Judge declining ad interim reliefs to
the appellant.

3] Mr. Shah, the learned counsel for the appellant submits that
the appellant is occupying the suit structure in his capacity as the
member of the society. He submits that it is the society which is the
owner of the suit structure. He submits that no notice has been
issued to the owner and without such notice the MCGM is not
entitled to demolish the suit structure. He submits that the suit

structure was constructed by the builder and not by the appellant. The appellant is only occupying the suit structure. He submits that the structure is not in the open space and not otherwise unauthorized.

4] Ms More, the learned counsel for the respondent defends the impugned order. She points out that not only the structure is in the open space but further, there are no permissions for such structure. She submits that notice on the appellant, who is occupying the suit structure is sufficient compliance with the provisions of law.

5] In this case, the learned trial Judge has considered most of the contentions raised on behalf of the appellant. The appellant, who is the occupier of the suit structure, cannot seek an injunction on the ground that no notice is served upon the society which is the owner. Similarly, the contention that since the appellant has not constructed the suit structure, the same cannot be demolished by the MCGM is also untenable. The material on record at least *prima facie* indicates that the structure is in the open space and in any case no permissions have been produced on record in support of the suit structure.

6] In the aforesaid circumstances, there is no case made out to interfere with the impugned order. This appeal is therefore dismissed. There shall be no order as to costs. Civil application does not survive and is disposed of accordingly.

7] At this stage, the learned counsel for the appellant seeks for ad interim reliefs restraining demolition as the appellant seeks to approach the Hon'ble Apex Court. In the facts of the present case, such ad interim relief, cannot be granted.

(M. S. SONAK, J.)