

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

**APPEAL FROM ORDER NO.3 OF 2015
WITH
CIVIL APPLICATION NO.6 OF 2015**

Shri Sadanand R. Bhidvadkar

... Appellant

Vs.

Municipal Corporation of Greater Mumbai & Ors. ... Respondents

Mr.J.N. Jayale for the Appellant

Mrs.Madhuri More for Respondent / Corporation

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: FEBRUARY 5, 2018**

P.C. :

1. This appeal is filed against the ad-interim order dated 23.12.2014 passed by the learned Judge of the City Civil Court, Borivali Division, Dindoshi, Mumbai thereby refusing to grant ad-interim relief. The Corporation gave notice dated 16.7.2014 to the appellant/plaintiff about the unauthorised extension to the structure with BM walls and Mangalore tile roof on the access road of Jeevan Apsara Cooperative Housing Society.

2. The learned Counsel for the appellant has submitted that the structure is old and is not an extension but it is standing there prior

to 1964. In the year 1996, a second notice was issued. Another notice was issued in 2008 and this is the third notice. The structure was constructed by the plaintiff's parents. The learned Counsel for the appellant submitted that his documents were not considered by the trial Court and thus, the order of the trial Court is to be stayed till Notice of Motion is heard.

3. The learned Counsel for the Corporation has submitted that the structure obstructs the access to the society and the society has also filed Writ Petition No.1563 of 2014 in which the High Court by its order dated 24.11.2014 has directed the Corporation to take action. She relied on the order passed by the Designated Officer to the Corporation on 13.12.2014.

4. Perused the impugned order, the order of the Designated Officer-IV / Assistant Engineer (Building and Factories), K/West Ward. Also perused the map alongwith the impugned notice. It shows that the extended structure is on the road. In the order dated 13.12.2014, the Designated Officer has considered all the documents produced by the plaintiff and it is held that the permission of the competent authority or proof of existence of the structure prior to the datum line of 17.4.1964 is not produced and

there is encroachment on the 15' wide access road. The trial Court has also taken into account that the earlier landlord and he present respondent/society have filed consent terms in Suit No.6823 of 1973 by which the said road is available as an access road to the society. The submissions of the learned Counsel that this consent terms are not binding on him because he was not party to the suit, cannot be appreciated because these consent terms were entered into by the earlier landlord of the suit premises. The Designated Officer has considered the documents of City Survey No.1565 which was produced by the appellant. However, it does not prove existence of the notice structure prior to the datum line. In view of this, the order passed by the trial Court refusing ad-interim relief cannot be faulted with. Hence, no interference is called for with the impugned order.

5. Appeal is dismissed. In view thereof, Civil Application also stands dismissed.

(MRIDULA BHATKAR, J.)