

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

**APPEAL FROM ORDER NO. 184 OF 2019
WITH
CIVIL APPLICATION NO. 222 OF 2019
IN
APPEAL FROM ORDER NO. 184 OF 2019**

Mohd. Azam Tufail Ahmed Qureshi ...Appellant

V/s.

The Municipal Corporation of
Greater Mumbai

...Respondent

....

Shri P. J. Thorat, advocate for the appellant.

Shri A. Y. Sakhare, Sr. Advocate a/w Mrs. More, advocates for
the respondent/MCGM.

Mr. Prashant Patil, Sub-Engineer, Maintenance Department, H/E
Ward, MCGM present in the court.

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CORAM : M.S.KARNIK, J.

DATE : 14th JUNE, 2019

P.C. :

1. The challenge in this Appeal is to an order passed by the Judge, City Civil Court refusing to grant ad-interim relief in respect of the suit structure in occupation of the appellant. It is observed by the Learned Judge that nothing is produced on record to indicate that the structure in question is authorised.

The appellant approached the trial court for relief that the structure should not be demolished without following the due process of law.

2. Learned counsel appearing on behalf of the appellant submitted that the appellant is carrying on business in the said structure for long years. The said structure is not on the Nallah, but it is on the road across the Nallah. He would submit that no notice has been served on him and without following the due process of law, the Corporation intends to take action of demolition.

3. Learned counsel Shri Sakhare for the MCGM produced on record the copy of notice issued on 17/01/2017 under section 314 of the MMC Act indicating that the structure is on the Nallah and that appellant should remove the structure. The notice according to him is duly served.

4. Learned counsel Shri Thorat for the appellant would submit that this is a first time that the notice of 2017 is produced and the appellant is not aware of this notice.

5. Learned Sr. Counsel Shri Sakhare on instructions of the

officer Shri Prashant Patil, Sub-Engineer, BMC, who is present in the court, submits that with a view to avoid unnecessary delay, the Corporation would issue a fresh notice under section 314 of the MMC Act.

6. Having regard to the urgency and especially in the light of the order passed by the Division Bench of this Court in Writ Petition (L) No. 1726/2019, he submits that the said notice will be served on the occupants or pasted on the said structure which action would be taken during the course of the day. This is without prejudice to the contention of the learned Sr. Counsel Shri Sakhare that such a notice is not at all necessary to be issued. He would submit that the said notice is being issued by the Corporation as by way of abundant caution and with a view to avoid delay. He would submit that there is no requirement in law for issuance of such a notice in law and the Corporation can directly initiate action against the unauthorised structure like that of the appellant which is standing on a Nallah.

7. In this view of the matter, as the Corporation would be issuing a fresh notice under section 314 of the MMC Act against

the appellant in respect of the structure in question, nothing survives for consideration in the present Appeal. The appellant obviously would be entitled to take legal recourse, in the event the notice is issued.

8. As the notice is being served today, Corporation not to proceed with the demolition of the structure till 17/06/2019.

9. In this view of the matter, Appeal and Civil Application are disposed of.

(M.S.KARNIK, J.)