

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER (STAMP) NO.920 OF 2019
WITH
CIVIL APPLICATION (STAMP) NO.921 OF 2019
IN
APPEAL FROM ORDER (STAMP) NO.920 OF 2019**

Mr. Abdul Rehman Shamsuddin Shaikh ...Appellant
vs.
The Municipal Corporation for Greater Mumbai ...Respondent

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Mr. Anand Mishra, i/b. Mr. Ashok M. Saraogi, for the Appellant.

Ms. Madhuri More, for Respondent-MCGM.

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CORAM : S.C. GUPTA, J.

DATED : 26 SEPTEMBER 2019

P.C. :

. This appeal from order challenges an interlocutory order passed by the City Civil Court at Greater Mumbai on a notice of motion of the Appellant. The Appellant's suit is for protection of his possession of the suit premises. The defendant Corporation has issued a notice under Section 351 of the Mumbai Municipal Corporation Act ('MMC Act'), 1888. The notice has been replied to by the plaintiff and, on consideration of his reply, a detailed speaking order has been passed by the defendant Corporation. Pursuant to the speaking order, even a notice has been issued under Section 448 of the MMC Act. The

impugned notice has been resisted by the plaintiff on two grounds. Firstly, it is submitted that the premises are old premises, which have been in existence since prior to the datum line and that the premises anyway fall within a slum area and, therefore, the defendant Corporation has no authority or power to issue notice either under Section 351 or 448 of the MMC Act. Both these grounds were negated by the trial court. The trial court, in its impugned order, has observed that there was nothing to show that the premises were either existing since prior to the datum line or were authorised, that is to say, constructed with permission from the defendant Corporation. The Court also did not find merit in the plaintiff's case that the suit premises were situated within a slum area. No notification of the State Government under Section 4 of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971 was produced before the Court.

2. There is no infirmity to be found with the impugned order. The impugned order is clearly supported by evidence. The plaintiff has failed to make out a case either that the structure was in existence on the relevant date or was authorised.

3. The appeal from order is dismissed.

4. Learned Counsel for the Respondent Corporation states that the demolition shall be carried out in accordance with its notice under Section 351, that is to say, in respect of the portion of the suit structure marked 'C' with thatched lines.

5. In view of the disposal of the appeal from order, the civil application does not survive and is disposed of.

(S.C. GUPTE, J.)

Smita
Gonsalves

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Smita Gonsalves
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