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

**APPEAL FROM ORDER NO. 405 OF 2018
WITH
CIVIL APPLICATION NO. 534 OF 2018
IN
APPEAL FROM ORDER NO. 405 OF 2018**

Wenclouse Fadrice D'Souza ..Appellant
vs.
The Municipal Corporation of Greater
Mumbai ..Respondent

....
Shri G.C. Singh i/b. Ms. Shweta I. Singh for appellant.
Mrs. Madhuri More for respondent - MCGM.

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CORAM : M.S.KARNIK, J.

DATE : 26th JUNE, 2019

P.C. :

Heard learned Counsel for the appellant and learned
Counsel for the respondent - MCGM.

2. The challenge in this Appeal is to an order dated 7th
March, 2018 passed by the Judge, City Civil Court, Borivali
Division, Dindoshi, Mumbai. It is the contention of learned
Counsel for the appellant that the structure in question for
which notice is issued is a pacca structure. He has relied upon

the photographs to show the existence of the structure. Learned Counsel for the appellant relied upon the photo-pass and other documents to support his case that the structure has been in existence for quite a long time. Learned Counsel for the appellant would further submit that the notice issued by the Corporation is vague and there is no description of the suit property mentioned in the said notice. He would submit that even the survey numbers are not mentioned in the notice and the notice is as vague as it can be.

3. He would further submit that the trial Court has not appreciated the documents in proper perspective. Assailing the findings of the trial Court learned Counsel for the appellant would contend that the trial Court committed an error in coming to the conclusion that the structure is pacca structure. In his submission, the structure which is in existence is only painted.

4. On the other hand learned Counsel for the Corporation Mrs. More submitted that a proper notice was

issued to the appellant informing him details of the structure. At page 66 is a notice dated 27th June, 2016 to which she invited my attention. She pointed out that it is categorically mentioned that the structure in question is unauthorized construction of temporary shed with the help of Tarpolin sheet and others material admeasuring size of 11' x 21'. Even the sketch of the structure and the dimensions therein are mentioned. Location of the structure is also shown in the map. Learned Counsel would submit that the structure in fact was demolished and the appellant without any authorisation/permission has reconstructed the said structure. She pointed out that the notice dated 15th September, 2017 at page 68 is a notice which has been issued for removing the structure as said structure is being constructed again and again despite demolition.

5. I have gone through the order passed by the trial Court. It is the primary contention of learned Counsel for the appellant that the structure is a pacca structure. However, the

photo-pass on which learned Counsel for the appellant has relied indicates that the same has been issued in respect of temporary structure/hutment. The photographs which are produced on record would clearly reveal that the structure is newly constructed and pacca structure.

6. The affidavit has been filed on behalf of the respondent - Corporation affirmed by Shri Abhishek R. Patil, working as Asstt. Engineer (B & F), I/c. K/West Ward, dated 23rd August, 2018. It would be material to reproduce paragraphs 4, 5, 6 and 7 of the said affidavit :

“4. I say that appellant has also filed 8 suits bearing L.C.Suit No. 490 to 497 of 2015 challenging the notice under section 55 of the MRTP Act, dt. 30.1.2015. I say that the said notices are issued by these respondents under section 55 of the MRTP Act. In pursuance of the same, demolition action was taken by these respondents and temporary sheds are removed on 18.2.2015. I say that though the appellant challenged the said notice and filed the suit on 24.2.2015 and hence he has not pressed for ad-interim relief.

5. I say that it was observed that once again the temporary sheds were propped up therefore, various notice under section 55 of the MRTP Act were issued to

owners/occupiers of Opp. Courtyard Hotel, Sarota Pada, Ambivali, Veera Desai Road, Andheri (W), Mumbai-58. I say that it also includes the present suit structure which is unauthorised construction of temporary shed with Tarpauline sheet and other material adm.10'x24'. I say that the notice was issued to the appellant as he has carried out development of temporary nature unauthorisedly without permission. By the said notice, he was directed to remove the structure within 15 days from the receipt of the notice, however, the same was not removed and hence the same structures are removed on 15.9.2017 and 29.9.2017. I crave leave to refer and rely notices and demolition report as and when produced.

6. I say that as once again the sheds were constructed general notice dt.15.11.2017 are issued to the occupier and owner of the shed Sarota Pada, Ambivali, Veera Desai Road, Andheri (W), Mumbai-58. I say that the structures are once again demolished on 12.12.2017. I say that time to time demolition action is taken out by these respondents, inspite of the same, appellant is constructing structure at site with malafide intention to snatch the order in his favour. I say that appellant is suppressing the said fact, moved before this Hon'ble Court to snatch the order and also for reconstruction of the suit premises. I say that the appellant has purposely not disclosed that the said structures are constructed on public road at the risks and costs of general public and hence not entitled for any relief from this Hon'ble Court. I say that the appellant has not produced any single documents showing existence of the suit structure. I say that the

appellant address also differs, I say tht the documents relied by the plaintiff regarding election ID Card and Adhar Card also differs. I say that from time to time these respondents are taking action against unauthorised construction. Inspite of the same the appellant is reconstructing the same at the said site. I say that appellant hereinabove has come with clear hands and hence the Hon'ble Trial Court has correctly dismissed the ad-interim relief.

7. I say that in the meantime the appellant has filed L.C. Suit No. 4749 of 2017 for challenging the notice. The Hon'ble Trial Court was pleased to refuse ad-interim relief on 27.11.2017. Being aggrieved by the said order, appellant filed present Appeal from order. I say that appellant is produced the documents pertaining to the chawl structure and not the structure at road side. I say that on several occasions action was initiated and hence the present appeal from order is liable to be dismissed.”

7. It is therefore seen that despite demolition the structure is rebuilt. Even the photographs on record indicate that the structure in question is a newly constructed and pacca structure.

8. I have gone through the order passed by the trial Court refusing interim relief. I see no reason to interfere with

the said order. The trial Court has taken into consideration all the materials on record while rejecting the Notice of Motion and even awarded cost of Rs.3000/- payable to the District Legal Services Authority. In view of the affidavit filed and the categorical findings recorded by the trial Court that the plaintiff is making unauthorised construction without taking permission of the defendant/ MCGM, the plaintiff must have knowledge that the unauthorised structure is liable to be demolished by the defendant/MCGM. It is not even the case of the plaintiff that there is any authorisation/permission in respect of the said structure. In this view of the matter, I see no reason to interfere with the reasoned order passed by the trial Court.

9. The Appeal is dismissed.

10. At the request of learned Counsel for the appellant, the interim order which is in operation from 13th April, 2018 is continued for a further period of 4 weeks from today.

11. In view of the dismissal of the Appeal, nothing survives for consideration in the Civil Application. The Civil Application is disposed of.

(M.S.KARNIK, J.)