

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

**APPEAL FROM ORDER NO. 526 OF 2016
WITH
CIVIL APPLICATION NO. 674 OF 2016
IN
APPEAL FROM ORDER NO. 526 OF 2016**

Yoginder Paul Khanna

....Appellant

V/s.

Municipal Corporation of Greater Mumbai
& Ors.

....Respondents

Mr. P. Ranjan I/b. Halai & Co. for the appellant.

Mrs. Madhuri M. More for R.No.1/MCGM.

Ms. Shruti Sardesai a/w. Ms. Vatsala Pant i/b. Argus Partners
for respondent nos.2 and 3.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED : 20th FEBRUARY, 2019.**

P.C.:

. The appellant herein has challenged the order dated 04/04/2016 whereby the learned Civil Judge, City Civil Court, Borivli Division, Dindoshi, Mumbai has dismissed the Notice of Motion No.1404/2011 filed in L.C. Suit No.1166 of 2011.

2. The respondent-Corporation had issued notice dated 11/04/2011 under Section 351 of Mumbai Municipal Corporation (MMC) Act calling upon the appellant to show cause as to why the unauthorized

structures should not be demolished. Not being satisfied with the reply to the said notice, by order dated 25/05/2011, the Asstt. Commissioner, K Ward ordered demolition of the structures described in the said notice. Aggrieved by the notice and the order, the appellant filed a suit before the City Civil Court, Dindoshi seeking to restrain the respondent-Corporation from demolishing the subject structures. He also filed a notice of motion for interim relief which has been dismissed by the impugned order. Hence, this appeal.

3. The appellant had challenged the notice under Section 351 of MMC Act as well as the order mainly on the ground that the respondent-Corporation had not given 15 days time to show cause to the notice issued under Section 351 of MMC Act and secondly, on the ground that the appellant had purchased a building along with the subject structures in the year 1982. It is submitted that the said structures are in existence since last over 30 years.

4. On the last date of hearing, Mr. P. Ranjan, the learned counsel for the appellant had conceded that in view of the amendment to section 351(1)(A), the Corporation is required to give only seven days time and submitted that he would not raise any grievance as regards any

legality of the notice for want of sufficient time. This statement was recorded in the order dated 18/02/2019. Today, when the matter was called out, the learned counsel for the appellant conceded that the subject structures, as described in the notice, do not form part of the agreement dated 01/01/1982 under which the appellant had purchased the building. He submits that the appellant be permitted to file an application before the respondent-Corporation for regularizing the subject structures. The learned counsel for the appellant, under instructions, makes a statement that in the event the respondent-Corporation does not regularize the said structures, the appellant will himself demolish the same and on failure to do so, the Corporation would be at liberty to demolish the said structures. Statement is accepted as an undertaking to the Court.

5. In the light of above statement, following order is passed :-

(i) Appeal from Order is dismissed with liberty to the appellant to file an application for regularization as per the prescribed rules and procedure before the respondent-Corporation within a period of seven days from the date of uploading of this order.

(ii) The respondent-Corporation shall decide the regularization

application on its own merits, within a period of one month from the date of receipt of the application, after hearing the concerned parties including the original complainant / respondent nos.2 and 3.

(iii) In the event, the structure is not regularized, the appellant shall demolish the same within a period of seven days from the date of intimation of the decision by the Corporation. Until such time, the Corporation shall not execute the impugned order.

(iv) If the appellant fails to demolish the subject structures within a period of seven days as stated in clause (iii), the Corporation shall demolish the structures forthwith.

6. Civil Application stands disposed of in view of dismissal of the appeal.

(SMT. ANUJA PRABHUDESSAI, J.)