

DDR

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

**APPEAL FROM ORDER ST. NO. 13260 OF 2019
WITH
CIVIL APPLICATION ST. NO. 13261 OF 2019
IN
APPEAL FROM ORDER ST. NO. 13260 OF 2019**

Dnyan Prasarak Shikshan Sanstha
& ors. ..Appellants/Applicants

vs.

Municipal Corporation of Greater
Mumbai & anr. ..Respondents

....

Shri Shariq Nacchar a/w. Jaswandi Khatu a/w. Susmit Phatale
for appellants.

Mrs. Madhuri More for respondents – MCGM.

....

CORAM : M.S.KARNIK, J.

DATE : 7th JUNE, 2019

P.C. :

Before the trial Court the order dated 24/5/2014 passed by the Designated Officer of the Mumbai Municipal Corporation pursuant to the Notice issued under Section 351 of Mumbai Municipal Corporation Act ('MMC Act' for short) was under challenge. In the said order it is specifically stated that after issuing the notice the appellants have not submitted any

documents proving authenticity of the noticed structure. It is observed that thereafter they have not attended the hearing before the Designated Officer/Asstt. Engineer (B&F)-II N on 16/5/2014. The said order was challenged by way of the suit before the trial Court. The Notice of Motion was taken out by the appellants which came to be rejected.

2. Learned Counsel for the appellants invited my attention to the document at page 103 wherein the appellants have filed a reply dated 16/5/2014 to the notice issued under Section 351 of the MMC Act. Along with the said reply the appellants have enclosed various documents in support of the authenticity of the noticed structure. The said reply along with the documents are received in the office of the Mumbai Municipal Corporation as the stamped receipt dated 16/5/2014 endorsed on the said reply would indicate.

3. Though this point was specifically raised in the Plaint as well as in the Notice of Motion the consideration of the same is not reflected in the impugned order. In this view of the

matter, I am of the opinion that the appellants deserve to be given an opportunity of presenting their case before the Designated Officer in reply to the notice under Section 351 of the MMC Act. Though the reply dated 16/5/2014 along with the documents submitted by the appellants was on record, the same has not been considered by the Designated Officer while deciding the show cause notice issued under Section 351 of the MMC Act. The order dated 24/5/2014 therefore deserves to be set aside on this ground alone.

4. Learned Counsel for the respondent – Corporation though initially argued in support of the impugned order, however, was not in position to substantiate that the reply dated 16/5/2014 along with the documents was taken into consideration by the Designated Officer.

5. In this view of the matter, instead of setting aside the order passed by the trial Court and remanding the matter back for a fresh consideration, I am of the opinion that the order dated 24/5/2014 passed by the Designated Officer under

Section 351 of the MMC Act which order is challenged before the trial Court deserves to be set aside on the ground of non consideration of the reply filed by the appellants and failure to observe the principles of natural justice. Hence the following order :

ORDER

- (i) The impugned order dated 8/4/2019 passed by the Judge, City Civil Court, is quashed and set aside.
- (ii) The order dated 24/5/2014 at page 104 of the paper book passed by the Designated Officer under Section 351 of the MMC Act is quashed and set aside.
- (iii) In response to the show cause notice issued under Section 351 of the MMC Act, the appellants to appear before the Designated Officer on 17/6/2019 at 11.00 a.m. along with an additional reply or further documents in support of their case.
- (iv) After hearing the appellants, the Designated Officer to decide the notice afresh and in accordance with law within a period 6 weeks thereafter.

6. The Appeal from Order is allowed and disposed of accordingly.

7. In view of the disposal of the Appeal from Order, nothing survives for consideration in the Civil Application. The Civil Application is disposed of.

8. As nothing survives for consideration in the suit, learned Counsel for the appellants states that he would apply for withdrawal of the suit before the trial Court within a period of 1 weeks from today.

(M.S.KARNIK, J.)