

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

**CIVIL APPLICATION NO. 2439 OF 2018
IN
FIRST APPEAL NO. 808 OF 2018**

Shambhu Ramji BhanushaliApplicant

V/s.

The Municipal Corporation of Gr. MumbaiRespondent

Mr. B.S. Shukla for the applicant.

Ms. Oorja Dhond for the respondent.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 11th OCTOBER, 2019**

P.C. :-

. The applicant herein has sought to restrain the respondent from demolishing the suit premises till the disposal of the appeal.

2. The applicant who was the plaintiff in the suit had filed a suit for permanent injunction challenging the notice under Section 354-A of MMC Act dated 12/09/2008 in respect of the premises admeasuring 18' x 28' and 18' x 22' referred to as 'the suit premises'.

3. The applicant claims that the suit premises were in possession of Madhukar Tukaram Gurav and Mahadev Patil. The suit premises were numbered in 1976 census and pitch cards were issued in the names of

the two occupants. The original occupants relinquished their right in favour of the applicant and accordingly the applicant is in possession of the suit premises since 1994. The applicant claimed that he had carried out minor repairs to the suit premises without any addition or alterations. He had merely changed AC sheets for which no permission is required. The records indicate that the applicant had given reply to Section 354-A notice. The respondent-Corporation had not considered the reply. Furthermore, the respondent-Corporation had not filed its Written Statement in the Trial Court.

4. The Trial Court after considering the evidence adduced by the applicant – plaintiff held that the production two pitch cards in the names of previous owners would not prove the existence of the suit structure as per the stated dimension. The Trial Court held that the applicant had failed to prove that the suit structure as described in the said notice was existing since long and hence, dismissed the suit.

5. Mr. B.S. Shukla, the learned counsel for the applicant states that interim relief was operating in favour of the applicant till the disposal of the suit and that the said relief was continued from time to time in this appeal. He states that the applicant had given reply to the notice

on 13/09/2008 and that the same was not considered. Copy of the said reply is produced before the Trial Court and the Trial Court has failed to consider the same. It is seen that the respondent herein has not filed reply to the stay application despite opportunity is given. Ms. Oorja Dhond, the learned counsel for the respondent states that the concerned officer has not given her instructions despite repeated requests.

6. The grounds raised in the appeal require consideration. Hence, the appellant as well as respondent – Corporation are directed to maintain status quo in respect of the suit structure till the disposal of the appeal.

7. Civil Application stands disposed of.

Preeti
H.
Jayani

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Preeti H.
Jayani
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(SMT. ANUJA PRABHUDESSAI, J.)