

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

**SECOND APPEAL NO. 546 OF 2018
WITH
CIVIL APPLICATION NO. 1060 OF 2018**

Ramsamuch Dayaram Roy ... Appellant
Versus
Mira-Bhayander Municipal Corporation & ors. ... Respondents

**SECOND APPEAL NO. 547 OF 2018
WITH
CIVIL APPLICATION NO. 1059 OF 2018**

Sureshkumar Phoolchand Jain ... Appellant
Versus
Mira-Bhayander Municipal Corporation & ors. ... Respondents

**SECOND APPEAL NO. 548 OF 2018
WITH
CIVIL APPLICATION NO. 1044 OF 2018**

Vinodkumar F. Chopra and others ... Appellants
Versus
Mira-Bhayander Municipal Corporation & ors. ... Respondents

.....
Mr. R. D. Suryawanshi for the Appellants.
Mr. M. S. Lagu for Respondent No.1.
Mr. B.P. Shukla for Respondent No. 3.
.....

CORAM : SANDEEP K. SHINDE, J.
DATE : 24th JANUARY, 2019.

P. C.:

1. Not on board. Taken on board.
2. Heard learned Counsel for the parties.

3. Appellants had filed suits for declaration that the notice dated 3rd May, 2014 issued and consequent orders passed by the Municipal Corporation under Section 260 of the Bombay Municipal Corporation Act, 1949 is illegal, bad in law and for permanent injunction to restrain the Corporation from demolishing the suit property, in pursuance of the said impugned order.

4. The impugned notice was issued in view of the order passed by the Division Bench of this Court in Writ Petition No. 4032 of 2013, to which the appellants herein were the party respondents.

5. Respondent No.1-Corporation came into being on 28th May, 2014 and contention of the appellant is that the suit property was in existence since before the Corporation came into being. The Courts below have rendered a finding of fact, that not a single piece of paper regarding so called permission obtained from the then Mire Grampanchayat was produced. Finding is rendered by the Courts below, that nowhere the nature of structure regarding which so called permission of repair/construction was obtained from the then Grampanchayat is whispered, leaving the matter for speculation. An attempt was made to place on record application dated 18th March, 1994 and 12th June, 1998 whereby permission was sought for carrying out the repairs and it is further contended since Corporation did not respond to the said application, it amounts

to deemed permission. The Courts below have also rendered a finding of fact, that when impugned notice dated 3rd May, 2014 specifically showed a RCC structure of ground plus one floor, then the plaintiff ought to have spelt out the details highlighting the exact nature on the suit property in his occupation.

6. The Appellate Court has recorded finding that the plaint did not disclose the house number of the suit property and/or the date/year when it was constructed by the plaintiffs. It appears in cross examination, plaintiff had admitted the discription of the suit property as mentioned in the impugned notice. Thus, both the Courts have held that there was no record about construction of the suit property being authorised by the Municipal Corporation and there is no proof that the suit property was in existence prior to formation of Mira Bhayandar Municipal Corporation.

7. Thus, in my view, no case is made out for granting interim relief as prayed in the civil applications. The relief is refused.

8. Considering the fact of the case, place these appeals for admission on 5th February, 2019.

(SANDEEP K. SHINDE, J.)