

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (ST.) NO.21262 OF 2019  
ALONG WITH  
CIVIL APPLICATION (ST.) NO.21263 OF 2019**

Kitabullah Inayatullah ... Appellant

## Versus

The Mumbai Metropolitan Regional  
Authority

Through Metropolitan Commissioner  
of (MMRDA)

### 1a) The Jr. Planner

Town and Country Planning Division

And Another ... Respondents

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Mr. Atul Damle, Senior Advocate i/b Mr. Hemant Ghadigaonkar for the Appellant.

Mr. Kuldeep S. Patil for the Respondent.

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**CORAM : S.C. GUPTE, J.**

**DATE : 28 AUGUST 2019**

**P. C. :**

. Heard learned Counsel for the parties.

2 This Appeal from Order challenges an order passed by the City Civil Court at Bombay, Dindoshi on a draft notice of motion taken out by the Appellant (original plaintiff). By the impugned order, the court rejected the plaintiff's ad-interim application under the draft notice of motion.

3 The controversy concerns a purported unauthorized structure

constructed by the plaintiff and for which, a notice under Section 53(1) of the Maharashtra Regional Two Planning Act, 1966 ('MRTP Act') was issued by the Respondent-authority. It is the plaintiff's case that originally a notice was issued by the Respondent-authority under Section 53(1) of the Act, describing the property as unauthorized tin shed of size 38.00 m. x 25.00 m. on land bearing CTS No.502 & 502/1, at Vaishali Nagar, Jogeshwari (West), Mumbai-400 102. It was alleged in that notice that the development work referred to therein was carried out without approval of the concerned authority. This notice was issued on 7 January 2016. The plaintiff's case is that this notice was challenged by him in the present suit and that a *status quo* order was passed in respect of the structure on 21 April 2019 and that order continued till 16 July 2019. It is submitted that on 16 July 2019, the plaintiff received the present notice. This fresh notice was issued by the Respondent-authority under Section 53 of the Act, describing the structure as unauthorized construction of shops (10 Nos.) and garages on land bearing CTS No.502 and 502/1, Goregaon Village, Jogeshwari (West), Mumbai-400 102. The plaintiff, thereafter, took out a chamber summons for amending the plaint by incorporating a challenge to this fresh notice. Simultaneously, the plaintiff took out the present draft notice of motion, on which the impugned order came to be passed. The plaintiff's application for ad-interim relief restraining the Respondent-authority from acting upon the fresh notice dated 10 June 2019 was rejected by the court. The court observed that the defendants (Respondent-authority) had filed a report in respect of the unauthorized structure along with

photographs. The court observed that on perusal of the photographs as well as the panchnama filed by the defendants, it was apparent that the original unauthorized structure was demolished on 21 April 2016 between 11.45 a.m. and 04.45 p.m. The court observed that the photographs clearly showed that the structure was completely demolished, and that demolition was accomplished on 21 April 2016 itself, that is to say, before the *status quo* order was passed by the court. The court observed that there was nothing on record to indicate that the fresh construction carried out by the plaintiff after demolition of the old structure was after taking permission from the defendants and that the plaintiff had accordingly failed to prove a *prima facie* case for protection of the construction.

4 There is no infirmity in the impugned order passed by the trial court on 20 July 2019. The order is clearly supported by evidence on record in the form of panchnama, report and photographs. The material produced before the court clearly shows that the original unauthorized structure was fully demolished on 21 April 2016, i.e. before the first *status quo* order was passed by the court. Though that *status quo* order appears to have been continued even after 21 April 2016, that does not give any permission or licence to the plaintiff make any new construction without permission of the Respondent-authority. The court was seized of the matter in the first notice of motion and was to take a final decision on the draft notice of motion, whilst the *status quo* order continued. Learned Counsel for the Appellant/plaintiff submits that it was for the Respondent-

corporation to have pointed out the fact that the structure was already demolished and produce material in support of such case in the first notice of motion, which the court was seized of. Learned Counsel submits that panchnama and report together with the photographs were produced for the first time before the court when the present draft notice of motion was heard on 20 July 2019. It is apparent from the roznama maintained by the trial court in respect of the earlier notice of motion that the *status quo* order was passed on the very first date, when the application for ad-interim relief was moved before the court by way of a praecipe. The court heard learned Counsel for the plaintiff. So far as the defendants were concerned, their counsel sought time to argue the matter till the following Monday. The order of ‘no coercive action’ was, in the premises, passed only till the following Monday, i.e. till the defendants’ counsel was heard. On the following Monday, when the matter reached before the court, the defendants’ counsel pointed out to the court that the demolition was carried out on 21 April 2016. It was pointed out that the action of demolition had begun at 11.45 a.m. on that day and lasted upto 04.45 p.m. on the same day, and the structure was fully demolished and there was no structure in existence. Since the court was anyway seized of the matter and was to decide the notice of motion, the submissions were noted and earlier order was continued. As I have noted above, continuation of earlier order does not mean that the structure, which was demolished before the order was passed, could be reconstructed by the plaintiff and interim relief in respect of such reconstructed structure could be claimed under the

orders of continuation of the original *status quo* order. A *status quo* order merely requires the status of the suit property be sustained and preserved as of the date of the order. The fact that the defendants themselves did not submit any proof such as panchnama or photographs in the pending notice of motion is neither here and there. It does not undermine the veracity or genuineness of the documents in support of the defendants' case. There is nothing to indicate that the material was not genuine or authentic. Learned Counsel for the Appellant/plaintiff submits that the structure was not really demolished in 2016. The record suggests otherwise. The impugned order of the trial court based on the documents before it, thus, cannot be faulted.

5     There is, accordingly, no merit in the appeal.     The Appeal from Order is dismissed.

6     It is clarified that the observations made in the present order are with a view to consider the merits of the Appellant's case on the correctness or propriety of the impugned order passed by the trial court on the draft notice of motion. The original notice of motion taken out in the suit, which is pending before the trial court, shall be decided on its own merits.

7     In view of the disposal of the appeal, the civil application does not survive and the same is also disposed of.

**(S.C. GUPTE, J.)**