

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER (STAMP) NO. 26354 OF 2019****WITH****CIVIL APPLICATION NO. 1 OF 2019****IN****APPEAL FROM ORDER (STAMP) NO. 26354 OF 2019**

Sudhir S. Bawa

.....Appellant.

Vs.

Municipal Corporation of
Greater Mumbai

.....Respondent.

Mr. Suraj Kudalkar for the Appellant.

Smt. Oorja Dhond for the Respondent-MCGM.

CORAM : A. S. GADKARI, J.**DATE : 11th NOVEMBER, 2019.****P.C.:-**

By the present Appeal under Order 43 of the Code of Civil Procedure, the Appellant has impugned Order dated 16th August, 2019 passed in Notice of Motion No. 2638 of 2013 in L.C. Suit No. 2842 of 2013, dismissing the said Notice of Motion with costs.

2 Heard the learned counsel for the Appellant and the learned counsel for the Corporation. Perused the record.

3 The record indicates that, the Appellant has purchased a shop bearing No. A-12 at New Sonal Industrial Estate, Saki Vihar Road, Powai,

Mumbai admeasuring 125 sq. mtrs.. That, the Respondent-Corporation granted occupation certificate for the said premises by its letter dated 11th June, 1974. The Officer of the Respondent-Corporation inspected the shop premises and noticed that, in the back side of the open space of the said shop gala, an unauthorized structure i.e. horizontal extension in the back side of the said shop gala admeasuring 17 x 19 ft. was erected by the Appellant. The sketch of the said structure was drawn at the time of inspection. The Respondent accordingly issued a notice under Section 351 of the Mumbai Municipal Corporation Act, (for short, (for short, "*the said Act*"). The Appellant challenged the said notice by way of filing the present Suit.

The Appellant had also filed aforestated Notice of Motion for temporary injunction pending the Suit. The Trial Court, by its impugned Order dated 16th August, 2019 has dismissed the said Motion as noted earlier.

4 The learned counsel for the Appellant submitted that, the said structure is assessed in the record of the Respondent-Corporation as the Appellant is in use and occupation of the said structure since 1974. That, in last more than 40 years, the Respondent-Corporation did not notice the said structure and all of a sudden in the year 2013, on the basis of a Complaint submitted by one of the co-occupants of the said Society, the officer of the Corporation inspected the said premises and noticed the said alleged

unauthorized structure. It is submitted that, the Trial Court in para 8 has held that, the plan produced by the Respondent-Corporation indicates that, though there is A.C. Sheet roof shed behind the shop, it is an open shed and not a shed constructed with brick masonry walls. He submitted that, thus, the structure in dispute is not an unauthorized structure as alleged by the Corporation. He submitted that, the Trial Court has committed an error in not appreciating the said fact, in its proper perspective and therefore, the impugned Order may be set aside.

5 Perusal of record would indicate that, what has been purchased by the Appellant from the builder is a shop with the aforestated description admeasuring 125 sq. mtrs. It is the categorical case of the Respondent-Corporation that, the Appellant unauthorizedly constructed the aforestated structure admeasuring 17 x 19 fts. in the back side open space of the said shop. There is no lawful permission available on record, at least at this stage, to infer that the said structure is constructed in furtherance of permission granted by any Competent Authority. It is *prima facie* apparent from the record that, the notice structure, is a structure constructed apart from whatever is sanctioned by the Respondent-Corporation and therefore, the Corporation has rightly issued notice under Section 351 of the said Act. It further clearly appears from record that, the balance of convenience does not lie in favour of the Appellant and as noted earlier, it *prima facie* appears that, the Suit structure is apparently unauthorized.

6 In view thereof, I find no merits in the Appeal. Appeal is accordingly dismissed.

 In view of the dismissal of Appeal itself, Civil Application No.1 of 2019 does not survive, is also disposed off.

(A.S. GADKARI, J.)