

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

**APPEAL FROM ORDER NO. 600 OF 2018
WITH
CIVIL APPLICATION NO. 790 OF 2018**

Dilip Gangaram Deshmukh V/s. The Municipal Corporation of Greater Mumbai	...	Appellant
	...	Respondent

**WITH
CIVIL APPLICATION NO. 1074 OF 2018
IN
APPEAL FROM ORDER NO. 600 OF 2018**

Vijay Shantaram Mandavkar & Ors.	...	Applicants/ Intervenors
<u>In the matter between :-</u>		
Dilip Gangaram Deshmukh V/s. The Municipal Corporation of Greater Mumbai	...	Appellant
	...	Respondent

Mr.Rajesh Singh a/w. Ms.Priti Mahajan for Appellant.
Mr.Ashish Kamat i/b. Pradhan & Rao for Intervenors.
Ms.Madhuri More for Respondent-Corporation.

CORAM : A.S. GADKARI, J.

DATE : 19th November 2019.

PC. :

1] By the present Appeal filed under Order 43 of the Civil Procedure Code, the appellant has impugned Order dated 30th July 2018 passed in Notice

of Motion No.4799 of 2014 in L.C. Suit No.3142 of 2014, dismissing the said Motion with costs.

2] Heard Mr.Singh, learned counsel for the appellant, Ms.More, learned counsel for the respondent-Corporation and Mr.Kamat, learned counsel for the Intervenor.

3] The record indicates that, the respondent-Corporation had issued a notice to the appellant under Section 351 of the Mumbai Municipal Corporation Act (for short, “the said Act”) dated 7th August 2014 calling upon him to pull down unauthorized construction of structure situated at the ground floor ad-measuring 2.80 mtrs x 9.00 mtrs, as has been more particularly mentioned in the said notice. The said notice was issued after the Officer of the Corporation inspected the suit premises and found unauthorized construction carried out by the appellant. After considering the reply dated 11th August 2014 filed by the appellant, the Corporation issued Order dated 30th October 2014.

The appellant therefore filed the aforestated suit challenging the said notice and Order passed thereon. The appellant also took out a Notice of Motion to restrain the respondent-Corporation by an Order of temporary injunction from demolishing and/or pulling down the said unauthorized structure. The learned Trial Court by its impugned Order dated 30th July 2018 has dismissed the said Motion, as noted earlier.

4] Mr.Singh, learned counsel for the appellant submitted that, the said structure is erected in furtherance of a sanctioned plan by the respondent-corporation. He submitted that, the said structure is erected in the year 1986. That, the appellant herein claims tenancy in the suit structure and he is not a owner of the said structure. That, he has accepted the said tenancy from the landlord who has constructed the said structure. He therefore prayed that, during the pendency of the suit, the said structure may be protected by the Orders of this Court.

5] A perusal of record would clearly indicate that, what has been directed to be pulled down is the unauthorized structure erected by the appellant ad-measuring 2.80 mrts. X 9.00 mrts. and not the structure as has been mentioned in the sanctioned plan. The Corporation has given a specific sketch of the unauthorized structure erected by the appellant in its notice under Section 351 of the said Act. There is no material available on record to indicate that the said structure mentioned in the notice has any sanctity in the eyes of law. In other words, the said structure is purely an unauthorized structure erected by the appellant. It further appears to this Court that, the appellant wants to enjoy the fruits of the said unauthorized structure under the seal of this Court, which cannot be permitted and accepted. The balance of convenience does not lie in favour of the appellant and no irreparable loss or harm will cause to the appellant, if interim relief is rejected.

6] In view thereof, I find that there are no merits in the Appeal. Perusal of impugned Order would indicate that, the Trial Court has not committed any error either in law or on facts while passing the impugned Order.

7] Appeal being *dehors* of merits is accordingly dismissed.

8] In view of dismissal of the Appeal, Civil Application for intervention does not survive and is accordingly disposed off.

9] At this stage, Mr.Singh, learned counsel for the appellant submitted that, the operation and implementation of the present Order may be stayed for a period of four weeks and the interim relief granted by this Court may be continued.

10] As noted earlier, the structure erected by the appellant is totally unauthorized and illegal structure without having any sanctity in the eyes of law. In view thereof, I find no reason to continue the interim relief. The said prayer is rejected.

[A.S. GADKARI, J.]