

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

**APPEAL FROM ORDER NO. 39 OF 2016
WITH
CIVIL APPLICATION NO. 52 OF 2016**

Dayanand Govind Bavakar ... Appellant
V/s.
Municipal Corporation of Greater Mumbai & Ors. ... Respondents

- Mr.Mahadeo A. Choudhari for the Appellant.
- Mrs.Madhuri More for the Respondent-Corporation.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 21st JANUARY, 2019.

P.C. :

1] Heard learned counsel for the Appellant and learned counsel for the Respondent-Corporation.

2] This appeal takes an exception to the order dated 04/11/2015 passed by the City Civil Court Mumbai thereby dismissing the Notice of Motion No.190 of 2011 in L.C. Suit No.214 of 2011.

3] The said Notice of Motion was taken out by the present Appellant seeking relief of interim injunction restraining the Municipal Corporation from demolishing the suit structure in respect

of which the notice under Section 351 of the Mumbai Municipal Corporation Act (*for short, "MMC Act"*) was issued by the Municipal Corporation. The notice described the said suit structure as follows :

"Construction on open space of IIT Bombay Staff Co-operative Housing Society Limited with Brick masonry wall admeasuring (5'.6" x 9'.10") and ms rolling shutter, using for commercial purpose."

4] On the receipt of the said notice, the Appellant has furnished the various documents to show that the structure is authorized. However, according to the Appellant, the said documents were not considered and the order under Section 351 of the MMC Act came to be passed on 13/01/2011 holding the construction to be unauthorized. Being aggrieved by the same, the Appellant approached the trial Court. The trial Court has, however, rejected the Notice of Motion. Hence, the instant appeal.

5] The submission of learned counsel for the Appellant is that, though the Appellant has produced before the Assistant Commissioner, 'S' Ward, the various documents *like* Election Identity Card, Agreement for Sale between Mr.M.C. Thangappan and Mr.Mangesh Chindarkar, the N.A. order, Maintenance Surveyor Report from the office of the Additional Tahsildar, Agreement between

Mr.Mangesh Chindarkar with the present Appellant, the Shop Act licence, Electricity Bill, MTNL Demand Notice etc, none of these documents were considered properly by the Respondent-Corporation and an opportunity of hearing was also not given to the Appellant.

6] However, the order passed under Section 351 of the MMC Act clearly goes to show that all these documents were considered and it was found that these documents do not prove the authenticity of the notice structure. It was observed that neither the Sale Agreement nor the Electricity Bill nor the Demand Notice of Telephone-MTNL, even the Shop Act licence can prove that the construction of the notice structure was carried out after obtaining due permission from the Municipal Corporation or after getting the plan sanctioned.

7] In view thereof, as the sanctioned plan or the permission received from the Municipal Corporation is not produced to show that the construction carried out was authorized and legal, the Assistant Commissioner was perfectly justified in holding the construction to be illegal and unauthorized. There is no question of the Appellant being not given the opportunity of hearing, conversely the documents produced by the Appellant were properly considered.

8] In the light thereof, no fault can be found, if the trial Court has refused the relief of interim injunction, that too, after passing the detailed order; and considering the fact that the said land belongs to the I.I.T. and it was being used for the commercial purpose by the Appellant without proper permission. In view thereof, no interference is warranted in the impugned order. The Appeal and the Civil Application therefore being without merit, stand dismissed.

9] At this stage, learned counsel for the Appellant seeks stay to this order for the period of four weeks.

10] Learned counsel for the Respondent-Corporation strongly resists the same and in my considered opinion rightly so. As during the pendency of this Appeal the stay was not extended, this request stands rejected.

[DR.SHALINI PHANSALKAR-JOSHI, J.]