

**APPEAL FROM ORDER NO. 15 OF 2017
IN
B.C.C.C. L.C. SUIT NO. 2758 OF 2016
WITH
CIVIL APPLICATION NO. 18 OF 2017**

Mr.Gamesj Atmaram Tandel ...Appellant/Orig.Plaintiff
Vs.
The Municipal Corporation of Greater
Mumbai & Anr. ...Respondents/Orig.Defendants

Mr.Pratap Singh with Shailesh Pal for Appellant.
Ms.Madhuri More for Respondents.

CORAM : S.C. GUPTE, J.

DATE : 19 AUGUST 2019

P.C. :

Heard learned Counsel for the parties.

2 This appeal from order challenges an interlocutory order passed by the Bombay City Civil Court on a notice of motion taken out by the Appellant (original Plaintiff). The Plaintiff's suit challenges a notice of demolition issued by the Respondent corporation under Section 354A of the Mumbai Municipal Corporation Act. The notice refers to an unauthorised construction made by the Appellant on the existing ground plus first floor structure. The construction is said to admeasure 14M x 28M x 6.4M at Tandel House near Jogani Industrial Estate, V.N. Purav Marg, Chunabhatti. The impugned notice claims that this structure was demolished on 3 February 2016 with the help of Chembur police station. The notice claims that on inspection of the site on 17 October 2016, it was

found that unauthorized reconstruction of the demolished structure was being carried out by the Appellant. This reconstruction was said to be without a valid permission from the competent authority. The Appellant was, in the premises, called upon to demolish the notice structure within 24 hours. This notice has been challenged by the Appellant in the present suit. The Appellant claimed an interim injunction in terms of the perpetual injunction sought in the suit in his notice of motion. By the impugned order, the trial court rejected the notice of motion holding *inter alia* that the documents produced by the Plaintiff did not make out any *prima facie* case that the Plaintiff's structure was a protected structure.

3 The Plaintiff's case in reply to the notice was that the structure was old and had been in existence since prior to 1962. The Plaintiff produced documents, such as property card, property tax bill, rent receipt, etc., in support of his case that the structure was an old structure and was protected. It is, on the other hand, the corporation's case that the structure originally was of ground plus one floor; it was an old structure having tiles and AC roof. The notice structure was of ground and two upper floors. The only document in support of the existence of this particular structure, namely, the structure having ground plus two upper floors, relied upon by the Plaintiff, is an assessment bill issued by the Municipal Corporation for the Assessment Year 2015-16. The assessment bill shows this structure as tiled and AC roof with house. There is nothing to indicate in the bill that this structure, in particular the second floor above the existing ground plus one structure, was in existence or was entitled to any protection.

4 The trial court, in its impugned order, has observed that it was an admitted fact that the Plaintiff had filed an earlier suit, being Suit

No.2449 of 2016, in respect of the same structure and that interim relief was refused to him. The court noticed that the Plaintiff had thereafter withdrawn the suit and filed the present suit on the basis of the same documents. The court observed that in support of his case of protected structure, the Plaintiff had merely relied on a tax assessment bill showing old house with tiles and AC roof. The court observed that the Plaintiff had not produced any document to show that the structure was a protected structure in the sense of being in existence as of the datum line, namely, 1 April 1962. The court observed that the Plaintiff had not produced any permission from the Defendant corporation for construction of the alleged structure either. The court, in the premises, came to the conclusion that no *prima facie* case was made out by the Plaintiff for grant of interim relief. The court observed that there was nothing to show that the corporation had not followed due process of law in the matter. The court *inter alia* observed that the previous structure was demolished in pursuance of a notice issued by the corporation and where the Plaintiff could not secure any interim relief from the court. The court observed that no fresh reasoned order was required to be passed after the original notice was executed by demolishing the structure and after the Plaintiff had reconstructed it post its demolition. The court, accordingly, was of the view that the Plaintiff had failed to make out a *prima facie* case, and dismissed the notice of motion.

5 The Appellant/Plaintiff has no document to produce in support of his case that the entire structure and in particular, the second floor of the structure, was a protected structure, namely, either as an authorized structure or a structure existing as of the datum line.

6 There is, accordingly, no merit in the present appeal. The appeal from order is dismissed. It is, however, clarified that since the original structure was, even according to the Respondent Corporation, of ground plus one floor, the demolition shall only be in respect of the second floor of the suit structure.

(S.C. GUPTE, J.)