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

**APPEAL FROM ORDER (ST) NO.35355 OF 2018
WITH
CIVIL APPLICATION (ST) NO.35357 OF 2018**

Abdul Karim Jamal Mansuri
and anr ... Appellants.

V/s.
Municipal Corporation of Greater
Mumbai and anr ... Respondents

Mr. A. R. Pande i/by Shobhit Shukla, for the appellants.
Mr. J. Reis, Senior Counsel a/w Mr. Narendra V.
Walawalkar, Senior Counsel a/w Mrs. Madhuri More,
for respondent corporation.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 31st JANUARY, 2019.

P.C. :

1] Heard learned counsel for the appellants and learned
Senior Counsels for the respondents.

2] This appeal takes an exception to the order dated 4th
December, 2018, passed by the City Civil Court, Mumbai, thereby
dismissing the Notice of Motion No.4403 of 2018 in L.C.Suit No.3012
of 2018.

3] The said Notice of Notice of Motion was taken out by the
appellants herein seeking relief of interim injunction for restraining
respondent Municipal Corporation from taking any action in

pursuance of the Notice dated 03.10.2018, issued under Section 351 of the Mumbai Municipal Corporation Act and the order passed pursuant thereto on 15.11.2018.

4] By the said Notice, the appellants were called upon to show cause as to why the unauthorized construction carried out by them as stated in the Notice, should not be demolished. According to appellants the said construction was in existence since prior to their purchase in the year 1991 and it was since before the datum line 1.4.1962. It is submitted that earlier also Notice under Section 351 of the Mumbai Municipal Corporation, was issued in the year 1992, *inter alia* stating that the construction was illegal and unauthorized. However, subsequently no action was taken and therefore, it follows that the said notice was dropped as it was found that the construction is in existence at least since prior to 1992. According to learned counsel for appellants, the said construction needs to be protected at least at the interim stage since the Notice of Motion is pending before the trial Court. According to learned counsel for the appellants, the impugned order, therefore, passed by the trial Court needs to be quashed and set aside.

5] Per contra, learned counsel for respondent corporation has submitted that in the beginning the structure was only of the ground floor, as can be seen from the deed of conveyance dated

09.04.1991, under which the appellants have purchased the said property. In the said deed at various places where-ever the description of the suit property is given, it is clearly mentioned that it was consisting of ground floor only. In view thereof, it is submitted that in the year 1991, when the property was purchased by the appellants under the registered sale deed, it was consisting of ground floor only. Hence, additional construction standing at the site is carried out subsequently. It is done without obtaining any permission or getting the sanctioned plan approved from the Municipal Corporation. Reliance is placed by learned counsel for respondent also on the property tax assessment extract for the year 1961-62, which clearly shows that the structure was consisting of ground floor only. It was a C.I. shed, used as shop for storage. As regards the earlier notice issued under Section 351 of the Mumbai Municipal Corporation Act, it is submitted that it's authenticity is not proved. Reliance is placed on the Government Notification issued on 4.9.1996, by the State Government changing the name Bombay to Mumbai in the year 1996 only, whereas in the notice alleged to be issued in the year 1992, the name of the City is mentioned as Mumbai. According to him, therefore, the said notice and other documents are suspicious.

6] Learned counsel for the appellant, however, has relied upon the enquiry report of the "C" Ward, wherein it is pointed out that

the inspection of the suit structure was carried out and at that time also it was found that the structure was of ground + two floors and it was found to be unauthorized and hence notice under Section 351 of the Mumbai Municipal Corporation Act, was recommended to be issued.

7] In my considered opinion, it is totally unnecessary to enter into said aspect whether the said notice was genuine or not. What we have to consider at this stage is whether the construction of the upper floors standing at the site is legal or unauthorized.

8] Learned counsel for the respondent has in this respect relied upon the map drawn by the Cadestral Surveyor sheet of 1968 showing that the construction at that time was only of ground floor. Moreover, the sale deed under which the appellants purchased the property in the year 1991 also shows that at that time, it was consisting of only ground floor. Thereafter, when it was inspected in the year 1992, it was found that there was unauthorized construction of two upper floors. Nothing is brought on record to show that the notice under Section 351 of the Mumbai Municipal Corporation Act, issued in the year 1992, was dropped. Even at this stage, the appellants have not produced a single document to show that they have obtained permission for construction of these two floors and or they have got the plan sanctioned.

9] Explanation to Section 351 of the Mumbai Municipal Corporation Act, clearly provides that "to show sufficient cause for the purpose of this Section, shall mean to prove that the work mentioned in the said notice is carried out in accordance with the provisions of Section 337 or 342 and Section 347 of the Act". These Sections clearly mandate that the construction cannot be undertaken without getting the permission and the plans sanctioned from the Municipal Corporation. Sans any evidence on record to that effect, it has to be held that the appellants have failed to show sufficient cause. In view thereof, when the construction is apparently and patently illegal and unauthorized, such construction cannot be protected in any way.

10] As regards the reliance placed by learned counsel for the respondent on the circular dated 10.8.2011 to show that the datum line is 13.2.1966, it was for the purpose of rehabilitation and not at all for the purpose of tolerating unauthorized structure. Hence this argument cannot be of any help to the appellant.

11] The trial Court has considered all these aspects and thereafter passed the impugned order. Hence, in the discretionary order passed by the trial Court, no interference is warranted in the appeal. The appeal, therefore, stands dismissed.

12] At this stage, learned counsel for the appellants submits that the appellants are ready to give undertaking of their own, their

family members and the persons in possession, who are tenants or otherwise that they will vacate and demolish the said structures within a period of two months from today.

13] Learned counsel for respondent corporation submits that the period of two months is very long. In view thereof, as the appellants are ready to vacate the suit premises, on their own, in the interest of justice, period of six weeks is granted to them to do so, subject to filing their undertaking and the undertakings of the persons in possession of the said structure, within a period of 8 days from today, that they will vacate the structure and demolish the same within a period of six weeks from today. If the appellants fail to give such an undertaking within 8 days or fail to demolish the said structure within six weeks, respondent corporation is at liberty to do so.

14] In view of dismissal of Appeal itself, pending Civil Application therein no more survives and the same is disposed off accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]