

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO. 663 OF 2019****WITH****CIVIL APPLICATION NO. 760 OF 2019****IN****APPEAL FROM ORDER NO. 663 OF 2019**

The Municipal Corporation
of Greater Mumbai

.....Appellant.

Vs.

Mr. Jitendra Maruti Giri

.....Respondent.

Smt. Madhuri More for the Appellant.

Mr. Amogh Singh for the Respondent.

CORAM : A. S. GADKARI, J.

DATE : 7th JANUARY, 2020.

P.C.:-

By the present Appeal, the Appellant-Corporation has impugned Order dated 6th April, 2018 passed by the learned Judge, City Civil Court at Greater Mumbai in Notice of Motion No. 1165 of 2018 in L.C. Suit No. 1774 of 2016, allowing the said Notice of Motion in terms of prayer clause (a).

2 Heard Smt. Madhuri More, learned counsel for the Appellant-Corporation and Mr. Singh, learned counsel for the Respondent-Original Plaintiff. Perused the record annexed to the Appeal.

3 The record indicates that, after receipt of the Notice dated 8th July, 2016 issued under Section 351 of the Mumbai Municipal Corporation Act, 1888 (for short, "*the said Act*") and an Order dated 26th July, 2016

passed thereon, the Respondent filed the aforestated Suit challenging the said Notice and the Order.

It is the contention of the Respondent that, the suit property is a ground plus one storey structure and is standing thereon prior to 1960. That, the father of the Respondent Shri. Maruti Giri was the original tenant and after his demise, the Respondent become tenant in Suit Property. That, he has not made any construction in the suit premises.

4 The Respondent has produced on record various documents from which *prima facie* inference can be drawn that, the suit structure was in existence prior to the datum line of 1st April, 1964 and as per the policy of the Corporation, the said structure is a protected structure.

5 The Trial Court, after taking into consideration various aspects of the matter, has allowed the Notice of Motion filed by the Respondent in terms of prayer clause (a). The afore-stated facts are *prima facie* admitted facts on record. In view thereof, this Court is of the view that, the Trial Court has not committed any error while passing the impugned Order.

I find no merits in the matter and the Appeal is accordingly dismissed.

In view of dismissal of the Appeal itself, Civil Application No.760 of 2019 does not survive and is also disposed off.

(A.S. GADKARI, J.)