

Uday S. Jagtap

(corrected as per speaking to minutes order dated 2nd March, 2021)

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

**APPEAL FROM ORDER NO. 8 OF 2021
ALONG WITH
INTERIM APPLICATION NO. 69 OF 2021
ALONG WITH
INTERIM APPLICATION (ST.) NO. 603 OF 2021**

1. Shantilal Chhogalalji Doshi
an Adult, Indian Inhabitant, aged 58 years
Occ – business
2. Naresh Shantilal Doshi, an Adult
Indian Inhabitant, Aged 38 years
Occ- business,
Both carrying on business at premises
202, 204B at 170/A, 176, Jethwa Villa,
3rd Kumbharwada Lane, Dr. Mahimtura
Marg, Mumbai – 400 004 .. Appellants

Vs.

1. Municipal Corporation of Greater
Mumbai, a statutory Body under the
Mumbai Municipal Corporation Act
having its office at Mahapalika Marg,
Fort, Mumbai – 400 001
2. The Designated Officer,
Assistant Engineer, Building and
Factory, C-Ward, M.M.C.
Chandanwadi, Marine Lines,
Mumbai – 400 002 .. Respondents

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Dr. Uday Warunjikar a/w Mr. Bharat Joshi for the appellants
Mr. Narendra V. Walawalkar, Senior Counsel a/w Ms. Madhuri More
for the respondent – MCGM
Mr. Mayur Khandeparkar i/b Mr. Sanket Mungale for the Intervenor /
applicant in IA(st.) 603 of 2021

CORAM : PRITHVIRAJ K. CHAVAN, J.

RESERVED ON : 3rd FEBRUARY, 2021
PRONOUNCED ON : 18th FEBRUARY, 2021

JUDGMENT :-

1. This appeal under Order 43 Rule 1(r) of the Civil Procedure Code arises from an order dismissing a Notice of Motion No. 1289 of 2020 in L.C. Suit No. 1087 of 2020 by the City Civil Judge on 24th December, 2020.
2. Facts, necessary for disposal of the appeal can be stated hereinbelow :-
3. The appellants are the joint tenants with one Hitesh Shantilal Doshi in respect of two adjacent premises bearing No. 202 and 204B in a corrugated sheets roof, C.I. shed of “L” shape admeasuring 39 (13 meters x 3 meters) sq. meters and 30.4 (8 meters x 3.80 metes) sq. meters in both limbs on iron pillars and walls of the building and compound wall on both sides situated at 170/A, 176, Jethwa Villa, 3rd Kumbharwada Lane (old North Brooks Street), Dr. Mahimtura Marg, Mumbai 400 004 (hereinafter referred to as “notice structure”).
4. The respondent no.1 – M.C.G.M. issued a Notice to the appellants bearing No. C/DOC/220/351/C76N01 dated 21st July, 2020 under Section 351 of the Mumbai Municipal Corporation Act (for short “MMC Act”). By the said notice, the appellants were intimated that they had erected an unauthorised notice structure adjoining to Jethwa Building, known as “Shanti Metal Supply

Company” admeasuring 24 x 4 x 2.6 meters approximately, by way of using Brick Masonry Wall and slopping patra shed at 204B, Ground Floor, Plot No.176, J.N. Jethwa Building. The appellants were asked to furnish approval or permission from the competent authority and also to produce relevant documentary evidence in support of the notice structure.

5. Mr. Bharat Joshi, on behalf of the appellants had furnished certain documents in support of the notice structure by stating that it is an authorised and approved structure. The documentary evidence produced by the appellants and the remarks thereof by the respondents in the speaking order dated 9th December, 2020, read thus :-

Sr. No.	Document / Evidence produced	Remarks
1	<i>A letter from Adv. Bharat Joshi on behalf of M/s. Shanti Metal Supply Corporation dt. 31.07.2020</i>	<i>This document is merely a letter in which you alleged only about the notice issued by this dept. This document does not prove the authenticity of notice structure. Hence, this document cannot be accepted as documentary proof to prove the authenticity of the notice structure.</i>
2	<i>Photocopy of Roznama L.C. Suit No.656 of 1979</i>	<i>This document is the photocopy of Roznama regard L.C. Suit No. 656 of 1979. In the Roznama there was mention that the suit is regularised by the commissioner in view of memo under No. WOC/24311/.SEVI dt. 06.09.79. Hence this document cannot be accepted as documentary proof to prove the authenticity of the notice structure.</i>
3	<i>Photocopy of Letter issued by Sr. Inspector of shop and Establishment C Ward of MCGM</i>	<i>This document is photocopy of Letter issued by Sr. Inspector of shop and Establishment C Ward of MCGM. In this document there is no any description mentioned regarding notice structure, hence this document cannot</i>

		<i>be accepted as documentary proof to prove the authenticity of the notice structure.</i>
4	<i>Photocopy of Description & Details of capital value calculation Annexure A SAC No-CX 160320080000 addressed 88/90 north brook street, mumbai 400 004 issued by Brihanmumbai Mahanagarpalika Assessment & Collection department</i>	<i>This document is Photocopy of Description and Details fo capital value calculation Annexure A SAC No-CX 160320080000 addressed 88/90 north brook street, mumbai 400 004 issued by Brihanmumbai Mahanagarpalika Assessment & Collection department. This document does not show the record for existence of the structure prior to 01.04.1962, which is a datum line for commercial structure. In this document there is no any description mentioned regarding notice structure, hence this document cannot be accepted as documentary proof to prove the authenticity of the notice structure.</i>
5	<i>Photocopy of Brihanmumbai Mahanagarpalika Assessment & Collection department bill in the name of Jagjiwandasa Narottamdas and Kantilal Jagjiwandasa at C-7756(1) 202A/204A svp road and north brook street SHED GR</i>	<i>This document is Photocopy of Brihanmumbai Mahanagarpalika Assessment and Collection department bill in the name of Jagjiwandasa Narottamdas and Kantilal Jagjiwandasa at C-7756(1) 202A/204A svp road and north brook street SHED GR In this document it is clearly mentioned that first date of assessment is 01.04.1972 so this document does not show the record for existence of the structure prior to 01.04.1962, which is a datum line for commercial structure. In this document there is no any description mentioned regarding notice structure, hence this document cannot be accepted as documentary proof to prove the authenticity of the notice structure.</i>
6	<i>Photocopy of letter number WOC/173561/SEBI issued by WO C Ward Dt. 23.08.79.</i>	<i>In this document no any description related to current notice structure i.e. L shaped shop (as shown in sketch) known as Shanti Metal Supply Corporation at 204B, floor Gr. Plot 176, JN Jethwa Building, Dr. Mitrasen Mahimtura Marg, Durgadevi Udyan, 3rd Kumbharwada, Mumbai – 400 004 adjoining of Jethwa Building. In this document there is no any description mentioned regarding notice structure, hence this document cannot be accepted as documentary proof to</i>

		<i>prove the authenticity of the notice structure.</i>
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6. Having gone through the reply furnished by the appellants, respondent no.2 concluded that the documentary evidence supplied by the appellants is not authentic and not satisfactory, in the sense, there is no due approval or permission from the competent authority namely; Executive Engineer (Building Proposal) City – III of MCGM qua the notice structure.

7. Consequently, the respondents by a speaking order dated 9th December, 2020 directed the appellants to remove / demolish / pull down the notice structure within 15 days from the receipt of the order. It was, *inter alia*, informed that if the appellants fail to remove / demolish the notice structure, that will be removed at their own risk and cost. The appellants were *inter alia* intimated that they are liable to be prosecuted under Section 475A of the M.M.C. Act.

8. At the outset, if the pleadings are perused, there is no specific averment in the plaint that the notice structure has been erected with a sanctioned plan issued by the competent authority or there has been due authorisation by the respondents qua notice structure. In his elaborate argument, the learned Counsel for the appellants has emphasized several aspects, which in fact, do not find place in the plaint. Thus, *sans* pleadings, those submissions are hardly of any relevance.

9. A brief reference to the pleadings would clear the picture as to what has been contended by the appellants.

10. The appellants are carrying their business from the notice structure under the name and style as “Shanti Metal Supply Company”, which was erstwhile known as “Padmavati Steel and Engineering Company”. The appellants are the tenants qua the notice structure since 8th August, 1990. One Mr. J.N. Jethwa was the landlord. One Ramji Prajapati was the tenant in respect of the notice structure before the appellants were inducted as tenants.

11. The respondent no.1 had earlier issued a notice on 8th March, 1978 to said Ramji Prajapati under Section 351 of the M.M.C. Act. Pursuant to that notice, the earlier tenant Ramji Prajapati had filed a Suit No. 656 of 1979 challenging notice dated 8th March, 1978 under Section 351 of the M.M.C. Act. A plea was taken that the notice structure was in existence prior to 1962. Ad-interim injunction was granted in respect of demolition by the City Civil Court. On 14th September, 1979, the Deputy Law Officer of the respondent no.1 – M.C.G.M. made a statement before the City Civil Court that the notice structure was regularized by the Municipal Commissioner under Memo No. WOC/24311/SEVI dated 6th September, 1979. Based on the said statement by the Deputy Law Officer, the suit was withdrawn by the then tenant Ramji Prajapati.

12. It is contended that the regularization order was challenged before the Lok Aayukta by a politician. However, Lok Aayukta upheld the notice structure as legal. Even a question was raised in the Legislative Assembly by the then MLA Mrs. Jaywantiben Mehta, which was replied by drawing attention to the decision of the Lok Aayukta.

13. The appellants further averred that the Assessment Department of respondent no.1 in its capital value calculation has assessed the notice structure as shops. A statement in tabular form indicating such assessment has been annexed along with the plaint.

14. It is contended that the appellants had applied to the respondent under Right to Information Act on 7th July, 2020 seeking copy of the memo of regularization being Memo No.WOC/24311/SEVI dated 6th September, 1979. However, the respondent – M.C.G.M. has not yet answered or replied the said application seeking information under the Right to Information Act.

15. On these material averments, the appellants sought ad-interim relief which came to be refused by the City Civil Judge in his reasoned order dated 24th December, 2020.

16. Mr. Warunjikar, the learned Counsel appearing for the appellants reiterated the contention in the plaint as well as in the Memo of Appeal by assailing the impugned notice dated 21st July, 2020 under Section 351 of the M.M.C. Act by stating it untenable. The impugned notice dated 21st July, 2020 under Section 351 of the M.M.C. Act directs the owner / occupier / landlord as well as the appellants to submit sufficient cause to the satisfaction of the competent authority to justify the unauthorised construction / notice structure on plot no. 176, J.N. Jethwa building. The notice gives schedule of the unauthorised structure, which reads thus :-

“Unauthorised construction of L shaped shop (as shown in sketch) known as Shanti Metal Supply Corporation adjoining of Jethwa building having admeasuring total size

24m x 5m x 2.6m approx by the way of using Brick Mesonary wall and slopping patra shed at 204B, floor gr. Plot-176, JN Jethwa building, D.R. Mitrasen Mahimtura Marg, Durgadevi udyan, 3rd Kumbharwada, Mumbai – 400 004 without taken prior permission from competent authority i.e. MCGM.”

17. The learned Counsel for the appellants drew my attention to the Roznama of the L.C. Suit No. 656 of 1979 filed by the erstwhile tenant Ramji Prajapati wherein a statement was made that the dispute arising in the suit was regularized in view of Memo No. WOC/24311/SEVI dated 6th September, 1979. In that view of the matter, the suit was withdrawn.

18. It is contended by Mr. Warunjikar that since the respondent – M.C.G.M. has not clarified in respect of the said memo of regularization, the notice structure itself shows that the appellants have strong *prima facie* case.

19. The learned Counsel has also drawn by attention to Sections 100, 101 and 102 of the M.H.A.D.A. Act. According to Mr. Warunjikar, the notice structure was taken up for repairs by the Mumbai Building Repairs and Reconstruction Board (for short ‘MBRR Board’). A repair plan was submitted to the respondents by the MBRR Board. By virtue of a statutory provision, permission is deemed to have been obtained by the MBRR Board if the Board gives a notice of the proposed repair work to the M.C.G.M. before commencement of the work. It is submitted that despite receipt of such notice from the Board, no permission within 30 days of receipt of notice has been given. The appellants contend that the notice structure was repaired by the MBRR Board in the year 2014. The

sanction repair plan of MBRR Board of M.H.A.D.A. reflects the notice structure. Since, the respondents had not raised any objection before the State Government in respect of the repair plan of the notice structure, the MBRR Board had sanctioned the repair plan. Thus, it is deemed to be an authorised sanction structure.

20. Conversely, Mr. Walawalkar, the learned Senior Counsel, representing the respondents drew my attention to page 91 of the compilation depicting photographs in respect of the notice structure. It is contended that it is a “L” shape structure unauthorisedly erected in an open space which is required to be kept compulsorily open between two buildings. Mr. Walawalkar, submits that in an earlier suit, the erstwhile tenant contended that there are two notice structure whereas now the stand has been changed, wherein the present appellants contend that it is a one “L” shape structure. Mr. Walawalkar further drew my attention to the fact that there are no averments in respect of MHADA plan as well as no reference to the provisions of the M.H.A.D.A. Act. There is no pleading in respect of Section 100 and arguments advanced by the learned Counsel for the appellants, which are hollow and it cannot be heard. The learned Senior Counsel further stressed that MHADA plan does not offer regularization of the structure as per Section 100 and 101 of the M.H.A.D.A. Act. My attention is drawn by the learned Senior Counsel to Section 44, 45(5) and 156 of the Maharashtra Regional & Town Planning Act, 1966 (for short “M.R.T.P. Act”). He also drew my attention to Section 351(I)(a)(b) of the M.M.C. Act by contending that the notice structure is a clear encroachment between two buildings, which is nothing but a serious threat to the lives of the persons in the vicinity, as according to the learned Counsel, in case of

a fire hazard, there is every possibility of risking human life and destruction of the property. He also drew my attention to the Maharashtra Development Rules 1970 by contending that the proforma in Form-I is to be sent by the owner and not by the tenant / licensee.

21. Mr. Khandeparkar, learned Counsel for the intervenor concluded his submissions by contending a single sentence that plea of appellants is mutually destructive, in the sense, if the notice structure has been in existence prior to 1962 then, there was no need to apply for its regularization.

22. There is no specific, clear and positive assertion of a sanction plan *qua* the notice structure in the plaint, which is *sine qua non* for a suit of this nature. If there are no pleadings, no amount of evidence can be looked into in that regard. The learned Senior Counsel, Mr. Walawalkar, has therefore, pressed into service the observations made by this Court in a Public Interest Litigation No. 67 of 2017 in case of ***Tushara Guru Salien Vs. State of Maharashtra & Ors.*** What has been observed by a Division Bench of this Court in paragraph nos. 4 and 5 can be reproduced for advantage, which read thus :-

“4. Since the learned Judge who has granted the ad-interim protective order has yet to decide the application seeking interim injunction, for the benefit of the learned Judge and for the benefit of all Judges in the State of Maharashtra before whom such kinds of suits are instituted, we would like to clarify the legal position.

5. Concerning a property, a suit to enforce or protect an interest in the property which is governed by a Municipal

Statute, the interest protected has to be with respect to a plea that prima facie, the structure which is being targeted is an authorised structure. Meaning thereby, the plaint must make an averment that the structure targeted is prima-facie governed by the sanction. Merely pointing out deficiencies in the notice or the authority of the person issuing the notice is neither here nor there. Thus, the since qua non of such kinds of suits is a positive assertion made with reference to the sanctioned building plans.”

23. Thereafter, a single Judge of this Court by an order dated 18th September, 2019 passed in Appeal from Order (St.) No. 25660 of 2019 (*Mohammed Imran Gulam Mohd. Gujarati & Anr. Vs. The Municipal Corporation of Greater Mumbai*), while dismissing the Appeal from Order and imposing cost of Rs.50,000/- upon the appellants, has reiterated the order passed by the Division Bench in case of *Tushar Guru Salien* (supra). The same observations have further been echoed in Notice of Motion No. 495 of 2019 in P.I.L. No. 67 of 2017 (Coram : S.C. Dharmadhikari and G.S. Patel, JJ.).

24. As regards statement made by the Deputy Law Officer of MCGM in L.C. Suit No. 656 of 1979 on 14th September, 1979, it cannot be said to be the last and final word binding the MCGM. In that respect, Mr. Walawalkar, the learned Senior Counsel has rightly placed a useful reliance on a judgment of the Hon'ble Supreme Court in case of ***MCGM Vs. Abhilash Lal & Ors. 2019, DGLS (SC) 1488***. It was an appeal by MCGM under Section 62 of the Insolvency and Bankruptcy Code, 2016 against the judgment of the National Company Law Appellate Tribunal (NCLT), rejecting its plea with respect to a resolution plan approved by the NCLT under the provisions of that Code. The relevant part of the judgment reflects

in paragraph 48, which reads thus :-

“48. The last contention of the respondents, that MCGM was bound by the statement made by its counsel, in the opinion of this court, cannot prevail. As held earlier, there is no approval for the plan, in accordance with law; in such circumstances, the written plea accepting the plan, by a counsel or other representative who is not demonstrated to possess the power to bind MCGM, is inconclusive. In this regard, the court notices the well-known principle that there can be no estoppel against the express provisions of law. (Ref. Kasinka Trading v. Union of India (1995) 1 SCC 274, Darshan Oils (P) Ltd. v. Union of India (1995) 1 SCC 345, Shrijee Sales Corporation v. Union of India (1997) 3 SCC 398, Shree Sidhballi Steel Ltd. v. State of U.P. (2011) 3 SCC 193, Pappu Sweets and Biscuits v. Commr. Of Trade Tax, U.P. (1998) 7 SCC 228 and Commr. Of Customs v. Dilip Kumar & Co. (2018) 9 SCC 1.”

(emphasis supplied)

25. What has been carved out from the said paragraph is that there cannot be estoppel against the express provisions of law. Even if it is presumed for a moment that any such statement made by the Deputy Law Officer is made in a previous suit, that itself would not bind the MCGM. Be that as it may.

26. It, therefore, cannot be presumed that the notice structure has been duly regularized. Consequently, balance of convenience does not tilt in favour of the appellants.

27. It is the contention of the appellants that the sanction repair plan was sent by MBRR Board (MHADA) in the year 2010 to the respondents under Section 101 of the MHADA Act, which is a deemed sanction. The notice structure was repaired in 2014. The

respondent did not file any objection to the repair plans and, therefore, it is deemed to be an authorised structure. At the first flush, this argument may appear to be attractive, however, a close scrutiny would demonstrate that MHADA plan does not *ipso facto* confers regularization of an unauthorised structure. In that context, Section 156 of the M.R.T.P. Act makes the legal position clear, which reads as under :-

Section 156 :-

“Notwithstanding anything contained in any law for the time being in force —

*(a) 1[*****]*

(b) when permission for such development has not been obtained under this Act, such development shall not be deemed to be lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained.

[Provided that, the development which has been duly permitted or deemed to have been permitted by the concerned Village Panchayat within the area of the gaathan or the gunthewari development which has been regularized in accordance with the provisions of the Maharashtra Gunthewari Developments (Regulation, Upgradation and Control) Act, 2001, shall not be treated as unauthorised development under this Act]”

28. In case of any conflict between the rules and regulations as framed under the provisions of the M.R.T.P. Act or the Development Regulation and Scheme Regulations in one hand and the building bye-laws framed by the provisions of M.M.C. Act, it is quite clear that regulations made under the MRTP Act would prevail. Undisputedly, on 8th March, 1978 a similar notice under Section 351 of the M.M.C.

Act was issued to Mr. J.N. Jethwa by the respondents in respect of the notice structure for its removal, being unauthorised. It is apparent that a space, which should have been compulsorily kept open, had been encroached upon by the appellants.

29. Mr. Walawalkar, the learned Senior Counsel has drawn my attention to Rule 6 and 10 of the Maharashtra Development Plans Rules, 1970, which read thus :-

“6. Application for permission for development – (1) Subject to the provisions of this rule, every application under Section 44 for permission to carry out any development on any land shall be made in Form 1.

(2) The following particulars and documents shall be submitted along with the application, namely : –

(a) A site-plan (in quadruplicate) of the area proposed to be developed to a scale of not less than 1/600.

(b) A detailed plan (in quadruplicate) showing the plan sanctions and elevation of the proposed development work to a scale of not less than 1/100 as may be available.

(c) In the case of a layout of land or plot –

(i) a plan (in quadruplicate) drawn to a scale of not smaller than 1/15000 showing the surrounding land and existing access to the land included in the layout.

(ii) a plan (in quadruplicate) drawn to a scale of not less than 1/600 showing –

(x) sub-divisions of the land or plot with dimensions and area of each of the proposed sub-division and its use according to prescribed regulation;

(y) width of the proposed streets; and

(z) dimensions and areas of open spaces provided in the layout for the purposes of garden or recreation or like purpose.

(d) an extract of the record of rights or property register card or any other document showing the ownership of land proposed to be developed.

(3) Plans referred to in sub-rule (2) above shall be prepared by a licensed surveyor.

(4) The Planning Authority may also call from the applicant in writing any further information that may be required for the purpose of considering any application.

10. Permission to retain development of land carried out without proper authority – Any person aggrieved by the notice served by the Planning Authority under sub-section (1) of Section 53 and desiring to apply for permission under Section 44 shall write to the Planning Authority giving full details of the development carried out on the land, explaining the reasons for carrying out such development unauthorisedly and applying for permission for retention on the land of any building or works or for the continuance of any use of the land, to which the notice relates. Such person shall also submit to the Planning Authority the relevant particulars and documents that would have been required to be submitted under sub-rule (2) of Rule 6, had he applied for permission under Section 44 before the development was carried out.”

30. Form No.1 provided for making an application for development permission under Section 44 of the M.R.T.P. Act. It contemplates that there should be a signature of the owner of the land. The appellants are admittedly not the owners of the land over which the notice structure has been erected. As such, again the balance of convenience does not tilt in their favour.

31. The M.C.G.M. had issued a breach Notice dated 10th June, 2020 in respect of the suit structure directing the intervenor/ landlord / owner of plot no.6, upon whose land the notice structure is erected, to submit documentary evidence proving the authenticity / approval of the commercial shop (Shanti Metal Supply Corporation) standing in a compulsory open space i.e. notice structure. After taking measurements of the unauthorised construction on the site, no permission was shown by the occupier of

the said structure in respect of the said erection. The photographs of the notice structures are annexed at page 91 to the appeal memo.

32. The appellants have annexed a map with the Memo of Appeal prepared by M.H.A.D.A. which simply depicts that the notice structure is “L” shaped with no other specific measurements. It only depicts a sketch of ground and first floor. This map does not take the appellants case any where so as to show the notice structure authorised. Thus, neither there is any sanctioned plan nor any due authorisation or any assertion and, therefore, there is no question of balance of convenience in favour of the appellants. The learned Counsel for the appellants has not pointed out as to how the judicial discretion has not been properly exercised by the learned Judge while refusing equitable relief.

33. Mr. Walawalkar, learned Senior Counsel for the respondents has placed reliance upon a decision of the Hon’ble Supreme Court in the case of *Seema Arshad Zaheer and Ors. Vs. MCGM and Ors. (2006) 5 SCC 282*. The appellants in the said case, had approached the Hon’ble Supreme Court wherein there were certain allegedly unauthorised structures put up in plots belonging to CPWD, Government of India. The said land was allegedly leased to one *M* in the year 1939. *M*, who was carrying on business on that land, assigned his business to a company in the year 1947. The said company let out several portions thereof to different sub-tenants. In 2000, the said company, by a deed of assignment, assigned all its right, title and interest and claim in the said property to one *G* with the stipulation that it would be for *G* to obtain the rights of the assignor in the said property. *G* obtained possession of various

portions of the said land from the respective sub-tenants, made improvements / partitions in the existing old structure and then let out the same to different sub-tenants (the petitioner before the Supreme Court) in the year 2001-2002. In 2003, the respondent Corporation issued notices to the petitioners under Section 351 of the Bombay Municipal Corporation Act stating that the structure had been unauthorisedly constructed and calling upon them to show cause against the proposed removal or pulling down thereof. In that context, it is held by the Hon'ble Supreme Court in paragraphs 30, 31, 32 and 33, which read thus :-

“30. The discretion of the court is exercised to grant a temporary injunction only when the following requirements are made out by the plaintiff : (i) existence of a prima facie case as pleaded, necessitating protection of the plaintiff's rights by issue of a temporary injunction; (ii) when the need for protection of plaintiff's rights is compared with or weighed against the need for protection of defendant's rights or likely infringement of defendant's rights, the balance of convenience tilting in favour of plaintiff; and (iii) clear possibility of irreparable injury being caused to plaintiff if the temporary injunction is not granted. In addition, temporary injunction being an equitable relief, the discretion to grant such relief will be exercised only when the plaintiff's conduct is free from blame and he approaches the court with clean hands.

31. It is true that in cases relating to orders for demolition of buildings, irreparable loss may occur if the structure is demolished even before trial, and an opportunity to establish by evidence that the structure was authorised and not illegal. In such cases, where prima facie case is made out, the balance of convenience automatically tilts in favour of plaintiff and a temporary injunction will be issued to preserve status quo. But where the plaintiffs do not make out a prima facie case for grant of an injunction and the documents produced clearly

show that the structures are unauthorised, the court may not grant a temporary injunction merely on the ground of sympathy or hardship. To grant a temporary injunction, where the structure is clearly unauthorised and the final order passed by the Commissioner (of the Corporation) after considering the entire material directing demolition, is not shown to suffer from any infirmity, would be to encourage and perpetuate an illegality. We may refer to the following observations of this Court in M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu [1999 (6) SCC 464] made in a different context : (SCC p.529, para 73).

"This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is requires to be exercised has to be in accordance with law and set legal principles."

32. Where the lower court acts arbitrarily, capriciously or perversely in the exercise of its discretion, the appellate court will interfere. Exercise of discretion by granting a temporary injunction when there is 'no material', or refusing to grant a temporary injunction by ignoring the relevant documents produced, are instances of action which are termed as arbitrary, capricious or perverse. When we refer to acting on 'no material' (similar to 'no evidence'), we refer not only to cases where there are total dearth of material, but also to cases where there is no relevant material or where the material, taken as a whole, is not reasonably capable of supporting the

exercise of discretion. In this case, there was 'no material' to make out a prima facie case and therefore, the High Court in its appellate jurisdiction, was justified in interfering in the matter and vacating the temporary injunction granted by the trial court.

33. We find no reason to interfere with the order of the High Court in the seven appeals. We accordingly dismiss these SLPs. as having no merit. The petitioners are granted 15 days time to make alternative arrangements. Parties to bear their respective costs.”

34. This ratio squarely applies to the present set of facts. Thus, neither there is a *prima facie* case nor balance of convenience is in favour of the appellants. There is no question of irreparable loss, which cannot be compensated in terms of money.

35. To conclude, it is difficult to say that the conduct of the appellants is free from blame in the light of the discussion made hereinabove. No sympathy can be shown to an unauthorised structure as by showing the same, would tantamount to perpetuating illegality, which may cause danger to the lives of adjacent dwellers. There is accordingly, no merit in the appeal.

36. The Appeal from Order is dismissed with costs.

37. In view of the disposal of the appeal, interim applications do not survive and the same are disposed of.

(PRITHVIRAJ K. CHAVAN, J.)

1. After pronouncement of the judgment, the learned Counsel for the appellants seeks continuation of the *status-quo* order granted by this Court on 8th January, 2021 in order to facilitate them to approach

the Hon'ble Supreme Court.

2. Mr. Walawalkar, learned Senior Counsel for the respondents - M.C.G.M, however, strongly opposed continuation of the *status-quo* order granted by this Court on 8th January, 2021 by contending that a compulsory open space has been occupied by the notice structure and, therefore, in case of a fire, there is no access to reach the spot and, therefore, ad-interim relief granted earlier should not be continued.

3. Having considered the respective submissions, in the interest of justice, order passed by this Court on 8th January, 2021 to maintain *status-quo* shall stand extended for a period of three weeks. It is made clear that there shall be no further extension.

4. The parties to act upon an authenticated copy of this order.

(PRITHVIRAJ K. CHAVAN, J.)