

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO. 180 OF 2021
WITH
INTERIM APPLICATION NO. 1800 OF 2021**

Abdul Hamid Mapkhan Shah ... Appellant
V/s.
The Municipal Corporation of Gr. Mumbai ... Respondent

Mr.Pradeep Thorat a/w. Ms.Aditi Naikare i/b. Mr.Nagendra Shukla and
Mr.B.S. Shukla for Appellant.
Mrs.Madhuri More for Respondent-Corporation.

CORAM : A.S. GADKARI, J.
DATE : 10th August 2021.

PC. :

1. By the present Appeal, the Appellant has impugned Order dated 28th June 2021 passed by the learned Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai, thereby refusing to grant ad-interim relief in Notice of Motion No.1229 of 2021 in L.C. Suit No. 539 of 2020.
2. Heard Mr.Thorat, learned counsel for the Appellant and Mrs.More, learned counsel for the Respondent-Corporation. Perused record annexed to the Appeal.
3. Record indicates that, a notice dated 15th February 2020 was issued by the Authorized Officer of the Respondent-Corporation without

mentioning any provision of law. So also there is no mention of any specific structure and/or its dimensions in the said notice. However, the Designated Officer had directed the Appellant to remove unauthorized work within 3 days from the receipt of the said notice.

Record further indicates that, in pursuance of Order dated 13th March 2020 passed by the Trial Court, the Designated Officer has passed Final Order dated 4th June 2021, which elaborately mentions about the dimensions of the alleged unauthorized construction carried out by the Appellant. It prima-facie appears that, the Designated Officer while issuing notice dated 15th February 2020 (page 108 to the Appeal) has not followed the necessary procedure as per the provisions of law.

4. Mr.Thorat, learned counsel for the Appellant, on instructions, submitted that, at the behest of a sitting Councilor of Ward No.9, the notice in-question dated 15th February 2020 was issued malafide and in breach of the provisions of law.

He further drew my attention to the two Census Certificates dated 20th February 1980 issued by the Office of Controller of Slums, Bombay and B.S.D., issued in favour of Mr.Gaul Vincent Pimenta. He submitted that, the Appellant has purchased the suit property from the said Mr.Pimenta. That the dimensions of suit structures have been mentioned in the said two Certificates. He submitted that, the observations made by the Trial Court in

para No.7 of the impugned Order with respect to Government Resolution dated 15th July 2000 is correct. He submitted that, in the year 2018 the Appellant has already submitted his fresh application seeking new Census Certificates for the same structure, as was mentioned in Certificates dated 20th February 1980. However, till date the same is not received by him.

5. May that as it may. Taking into consideration the vital aspect of the matter that, the Corporation while issuing notice dated 15th February 2020 has not mentioned any provision of law under which it is issued and also the dimensions of the structure which the Corporation expected from the Appellant to pull down. However, while passing Final Order dated 4th June 2021, dimensions of various structures have been mentioned in it.

6. In view of the facts mentioned herein above, this Court is of the opinion that, for the time being the Appellant can be protected by ad-interim relief and the Trial Court can be directed to decide the Notice of Motion on its own merits, as per the provisions of law.

7. In view thereof, the impugned Order dated 28th June 2021 is set-aside.

The learned Judge seized of Notice of Motion No. 1229 of 2021 in L.C. Suit No. 539 of 2020 is requested to expedite hearing of the said Notice of Motion, as per the provisions of law.

8. During the pendency of final hearing of Notice of Motion No. 1229 of 2021 in L.C. Suit No. 539 of 2020, the Respondent-Corporation is directed not to implement its Final Order dated 4th June 2021 passed in furtherance of Order dated 15th February 2020.

9. Appeal from Order is allowed in the aforesaid terms.

10. In view of disposal of Appeal from Order, Interim Application No. 1800 of 2021 does not survive and is accordingly disposed off.

[A.S. GADKARI, J.]

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