

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO. 246 OF 2021
WITH
INTERIM APPLICATION NO. 2267 OF 2021**

Habeebur Rehman Amjad Shaikh of
Ali Furniture and Decorators and Anr. ... Appellants/Applicants
V/s.
Municipal Corporation of Gr. Mumbai and Anr. ... Respondents

Mr.Pradeep Thorat i/b. Mr.Bipin Joshi, Advocate for Appellants/Applicants.
Mr.Dharmesh Vyas a/w Ms.Shilpa Redkar, Advodates for Respondent Nos.1&2.

CORAM : A.S. GADKARI, J.
DATE : 17th September, 2021.

PC. :

1. Mr.Thorat, learned counsel for the Appellants drew my attention to the Schedule of notice dated 17th January, 2018 issued by the Competent Authority under Section 351(1) of the Mumbai Municipal Corporation Act, 1888 (for short, '*the MMC Act*'). He submitted that, the said schedule is very specific and it does not mention about 'wooden partition' as unauthorised structure erected by the Appellants.

He submitted that, however passing final Order dated 25th July, 2018, the Competent Authority has directed the Appellants to remove partition wall between two godowns/structure existing at the ground floor of

the suit building. He contended that, as there was no specific notice for removal of the said alleged unauthorised construction, the Appellants did not respond to the notice dated 17th January, 2018 by filing reply in that behalf.

2. Mr. Vyas, learned counsel appearing for the Respondent-Corporation fairly submitted that, the Corporation will issue a fresh notice to the Appellants under the appropriate provisions of law, calling upon him to remove the said partition or appropriate action to be initiated against the said wooden partition. He submitted that, the Competent Authority will issue a fresh notice within a period of two weeks from today.

3. If, the Corporation issues such a notice within a period of two weeks from today, the Appellants are permitted to file their reply to it within a period of two weeks thereafter.

The Competent Authority is directed to decide the said notice within a period of two weeks thereafter. Thus entire exercise mentioned hereinabove be completed within a period of six weeks from today.

4. Till then, the Respondent-Corporation will not take any coercive steps against the said wooden partition as mentioned in the operative part of the Order dated 25th July 2018 passed by the Competent Authority of Respondent-Corporation.

5. In view of the above, it appears to this Court that, the L.C. Suit No.2209 of 2018 filed by the Appellants on different cause of action, i.e. on

the basis of notice dated 17th January, 2018 issued under Section 351(1) of the MMC Act itself now does not survive.

6. Cumulative effect of the aforesaid deliberations is that, nothing further survives in the present Appeal and is accordingly disposed off.

In view of disposal of present Appeal, Interim Application No.2267 of 2021 does not survive and is accordingly disposed off.

7. It is needless to mention that, the Respondent – Corporation will not execute the notice dated 17th January 2018 (Exh.A) at page No.100 to the compilation of Appeal, for a period of six weeks as mentioned hereinabove.

[A.S. GADKARI, J.]

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