

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****APPEAL FROM ORDER NO. 406 OF 2021
WITH
INTERIM APPLICATION NO. 3225 OF 2021**

Padmakar Harischandra Raut ... Appellant
V/s.
The Municipal Corporation of Gr. Mumbai & Ors. ... Respondents

Mr.Ashif Husain a/w. Mr.S.T. Pandey and Mr.Arvind Singh i/b. Mr.Santosh Pandey for Appellant.
Mrs.Madhuri More for Respondent Nos.1 & 2 - Corporation.

CORAM : A.S. GADKARI, J.
DATE : 23rd November 2021.

PC. :

1. By the present Appeal, under Order 43 Rule 1 of Civil Procedure Code, Appellant has impugned Order dated 4th September 2021 passed in Notice of Motion No.2378 of 2013 in L.C.Suit No. 2776 of 2013, dismissing the said Motion filed by the Appellant.
2. Heard Mr.Husain, learned counsel for the Appellant and Mrs.More, learned counsel for the Respondent Nos.1 & 2-Corporation. Perused record.
3. Record reveals that, the Respondent-Corporation had issued a notice dated 21st November 2011 under Section 351 of Mumbai Municipal

Corporation Act to the Appellant for the unauthorized construction carried out by him and more specifically mentioned in the said notice. The sketch of the unauthorized structure has been given by the Respondent-Corporation along with the said notice. The Appellant filed its reply dated 25th November 2011 to the said notice. The Competent Authority of the Respondent-Corporation thereafter passed final Order dated 26th July 2013. The Competent Authority rejected contentions of the Appellant and confirmed its notice dated 21st November 2011. The Competent Authority also called upon the Appellant to remove unauthorized structure within stipulated period, failing to which Corporation will take necessary action in the matter.

4. The Appellant therefore filed the present L.C. Suit No. 2776 of 2013 impugning the said notice dated 21st November 2011 and Final Order dated 26th July 2013. The Appellant also filed Notice of Motion No. 2378 of 2013 seeking interim relief therein. As noted earlier, the Trial Court by its impugned Order dated 4th September 2021 was pleased to dismiss the said Motion.

5. Mr.Husain, learned counsel for the Appellant submitted that, the presence of suit structure can be inferred from various documents which are annexed to the plaint, such as electricity bill. That the existence of the suit structure was never objected by the Officers of the Respondent-Corporation for a substantial period and therefore it is to be presumed that, the said was in

existence officially. He further submitted that, it is due to the Respondent No.3/Org. Defendant No.2, the Respondent-Corporation has initiated action against the Appellant, otherwise the Respondent-Corporation never took cognizance of the suit structure. He submitted that, the dispute between the Appellant and Respondent No.3/Org. Defendant No.2 has been given color of erection of unauthorized structure, a consequence of which is issuance of notice under Section 351 of the MMC Act by the Respondent, Corporation. He submitted that, the Trial Court has failed to take into consideration these aspects and therefore the impugned Order requires interference by this Court in its appellate jurisdiction. He therefore prayed that, the present Appeal may be allowed by setting aside the impugned Order dated 4th September 2021.

6. Per contra, the learned counsel for Respondent-Corporation opposed the Appeal and submitted that, the suit structure is a patently unauthorized and illegal structure. That the Corporation did not grant permission to the Appellant to erect the suit structure and therefore it is the reason the Corporation issued notice under Section 351 of the MMC Act and passed Final Order dated 26th July 2013. She therefore prayed that, the present appeal may be dismissed.

7. At the outset, it is to be noted here that, during the course of arguments, this Court repeatedly asked learned counsel for the Appellant to point out or produce official permission or any other permission granted by

any Competent Authority to erect the suit structure. However, he was unable to either point out or produce the same and tried to draw my attention to various redundant documents which have no bearing in decision of the present appeal. It is the matter of record that, the Respondent-Corporation never granted permission to the Appellant to erect the suit structure. The suit structure is patently unauthorized and illegal structure. It is the settled position of law that, illegality should not be perpetuated under the seal of the Court.

8. I find that, the Trial Court has not committed any error while passing impugned Order dated 4th September 2021 either in law or on facts. There are no merits in the Appeal.

Appeal is accordingly dismissed.

9. In view of disposal of Appeal, Interim Application No. 3225 of 2021 does not survive and is accordingly disposed off.

[A.S. GADKARI, J.]