

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

**APPEAL FROM ORDER NO.31 OF 2022
WITH
INTERIM APPLICATION NO.188 OF 2022
IN
APPEAL FROM ORDER NO.31 OF 2022**

Devendra Kumar Nanalal Jain

...Appellant

Versus

The Municipal Corporation of
Greater Mumbai and Anr.

...Respondents

....

Mr. R.A. Thorat, senior Advocate i/b. Ms Nilima V. Sanglikar for
Mr. R.Y. Sirsikar for Respondents-MCGM.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 11th MARCH, 2022.

P.C.:-

1. The Appellant herein has challenged the order dated 25/12/2021 whereby the learned Judge has declined to grant ad-interim relief in respect of the notice dated 18/11/2021 and order dated 21/12/2021.

2. Heard Mr. R.A. Thorat, learned senior counsel for the Appellant and Mr. R.Y. Sirsikar, learned counsel for the Respondent-Corporation. Perused the records and considered the submissions

advanced by the learned counsel for the respective parties.

3. The Appellant, who was the Plaintiff had filed a suit seeking a declaration that notice dated 18/11/2021 and speaking order dated 21/12/2021 are illegal and bad in law. It was the case of the Appellant that he is a lawful tenant in occupation of Shop Nos.1 and 2 admeasuring 28.2 sq.meters, which shall be hereinafter referred to as “suit premises”. The Plaintiff claims that the suit premises were used for commercial purpose. The Respondent-Corporation had issued the notice under Section 351(1) of the Mumbai Municipal Corporation Act under the premise that the Appellant had carried out unauthorised construction in the suit premises. The said notice was followed by speaking order dated 21/12/2021.

4. Learned counsel for the Appellant states that notice under Section 351 of the MMC Act was received on 18/11/2021 and that the Appellant was required to file say to the said show cause notice within 7 days. He submits that the brother of the Appellant had suffered a heart attack on 21/11/2021 and as such the Appellant had sought time to file reply. The impugned order dated 25/12/2021 also indicates that the Appellant had asked for time and that in fact, the Appellant was not given

time to submit his say /written statement. The order has been passed without hearing the Appellant. In my considered view the impugned order is passed in violation of principles of natural justice. The records also indicate that the Appellant had relied upon several documents to substantiate his contention that the suit premises was already in existence. The Trial Court has not considered the said documents while rejecting the ad-interim relief.

5. In the light of above, the impugned order cannot be sustained. Hence, the same is set aside. Both parties are directed to maintain status-quo in respect of the suit premises till the application for ad-interim relief is finally decided.

6. The appeal stands disposed of. In view of disposal of the appeal, applications, if any stand disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)