

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**APPEAL FROM ORDER NO.52 OF 2022**  
**ALONG WITH**  
**INTERIM APPLICATION NO.241 OF 2022**

Devendra Tukaram Koli ] ... Appellant

Vs.

The Municipal Corporation of Greater ]  
Mumbai & Ors. ] ... Respondents

...

Mr. Afroz A. Siddiqui for the appellant.

Mr. Om Suryavanshi for the respondent-MCGM.

...

**CORAM : SMT. BHARATI DANGRE, J.**

**DATED : 26<sup>TH</sup> APRIL, 2022.**

**P.C. :-**

1. The suit filed by the plaintiff, being aggrieved by the show cause notice issued by the Bombay Municipal Corporation under Section 351 of the Mumbai Municipal Corporation Act, specifically pleads that the plaintiff is in use, occupation and possession of five structures and the land thereunder situated in

CST No.217/A/1 Village Anik, Taluka Kurla, Chembur, Mumbai, and referred to as the entire premises.

2. The show cause notice issued to the plaintiff under Section 351 of the MMC Act, which is assailed in the said suit does not give the location of the unauthorized construction, but merely refer the construction as “*unauthorized construction of structures and parking of vehicles at above mentioned address.*”

3. The letter addressed to the owner/occupier describes the structure as CTS No.220 near H.P. Nalla, Village Anik, Chembur, Mumbai. In the speaking order passed by the Corporation, the details of the unauthorized encroachments are said to be structures standing on CTS No.220. The documents produced before the MCGM pertains to CTS No.217/A/1 of Survey No.184(Part) of Village Anik.

4. There is thus a conundrum among the parties about the actual location of the unauthorized construction. The Corporation claims that it is standing on CTS No.220, whereas the plaintiff claims that it is standing on CTS No.217/A/1. In this background, the notice of motion filed by the plaintiff came to be decided by the Bombay City Civil Court and resulted into its rejection.

5. The learned Judge, however, does not make any attempt to dissolve the conundrum and put the burden on the plaintiff by

observing in paragraph No.9 that in fact by notice of motion, appointment of Court Commissioner was sought for, in order to ascertain whether the suit structure stands on CTS No.217/A/1 or CTS No.220. The ad-interim relief was granted on the said notice of motion thereby appointing the City Survey Officer, Kurla-III, Chembur, as the Court Commissioner and he was directed to submit a clear report indicating on which CTS the suit structure is standing. The said order being passed in the year 2014, the plaintiff was to deposit measurement charges/commission fee, but on it's failure to deposit the same, the report of the Commissioner could not be concluded.

6. The learned Judge however did not take it forward and without ascertaining the exact location of the suit property arrived at a conclusion that there is no *prima facie* case and the balance of convenience is not in favour of the plaintiff.

7. On hearing the learned counsel for the appellant, I am of the specific view that in the absence of the crux of the issue, being the location of the suit property qua it's CTS number, the learned Judge could not have determined the issue of injunction and the parameters whether there exists a *prima facie* case or the balance of convenience is in favour of the plaintiff. True it is, the plaintiff is at fault because he did not deposit the commission charges for appointment of the Court Commissioner, which was sought to be appointed in 2014 itself on the application moved by him. The

situation has not become reversible since the notice of motion is now rejected in 2021, to be precise, on 16/12/2021, the structure continues to stand wherever it is. Therefore, at this stage, that is, before determining whether a *prima facie* case exists in favour of the plaintiff, it is necessary to put this controversy to an end and to find out what is the exact location of the structure, in respect of which the notice has been issued to the plaintiff under Section 351 of the MMC Act.

8. The learned counsel for the appellant has instructions to make a statement that he shall deposit the measurement charges/commission fees as directed by the ad-interim order passed in 2014, within a period of four weeks from today. Upon such amount being deposited, the ad-interim order, in the notice of motion shall be revived and the City Survey Officer, Kurla-III, Chembur, who is appointed as Court Commissioner, shall carry out the measurement and submit a report within eight weeks thereafter.

9. Upon examining the report, the City Civil Court, Mumbai shall redetermine the issues in the notice of motion after affording the parties an opportunity as to whether a *prima facie* case exists in his favour. Necessarily, the impugned order passed on the notice of motion dated 16/12/2021 is set aside and the notice of motion is remanded to the Bombay City Civil Court.

10. Upon receipt of the report of the Commissioner, the Notice of Motion shall be adjudicated upon by the Bombay City Civil Court, within a further period of eight weeks.
11. The appeal is disposed off in the aforestated terms.
12. In view of the disposal of the appeal, the interim application does not survive and is disposed of as such.

**[SMT. BHARATI DANGRE, J.]**