

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

**APPEAL FROM ORDER NO.1046 OF 2022
WITH
INTERIM APPLICATION NO.19813 OF 2022
IN
APPEAL FROM ORDER NO.1046 OF 2022**

Shri Nimesh J. Patel

... Appellant

Versus

Municipal Corporation of Greater Mumbai and
anr.

.. Respondents

Mr. Mukesh M. Vashi a/w Pramod Bhosle i/b. Sharad Bhosle for the
Appellant.

Mr. R. Y. Sirsikar for the Respondent - MCGM.

CORAM : NITIN W. SAMBRE, J.

DATED : 21st NOVEMBER, 2022

P.C.:

1. On 17th February, 2014, the respondent - Municipal Corporation of Greater Mumbai (MCGM) caused a notice on the appellant - occupant, pursuant to the provisions of Section 55 of the Maharashtra Regional and Town Planning Act, 1966 giving entire description and dimensions about the illegal structure constructed by the appellant with a direction to remove the same.
2. This led to filing a Suit for injunction in which a prayer for grant of temporary injunction moved through Notice of Motion No.1446 of 2014 came to be rejected vide impugned order dated 16th December, 2020.
3. Mr. Vashi, learned Senior Advocate, appearing for the appellant would urge that the impugned notice is based on the incorrect

information supplied by the Landlord who intended to evict the appellant without following due procedure of law from the premises. According to him, the said structure is authorised as the same is in possession of the appellant for more than three decades. So as to substantiate the said fact, he try to rely on the map issued by the City Survey officer, Kurla and such other documents such as the renewed license issued by the Senior Inspector, (License) L Ward, License Department of Bombay Municipal Corporation of Greater Bombay, running the Unit in question and other similar documents issued under the Bombay Shops and Establishment Act, 1948, etc.

4. Mr. Vashi would also invite my attention to the date of issuance of notice i.e. 17th February, 2014 which is also claimed by the respondent-MCGM to be the date of field inspection conducted by the Assistant Engineer who has caused the notice in question. As such, according to him, the contention about the biased approached on the part of the respondents can be substantiated. As such, he would urge that the injunction ought to have been granted particularly having regard to the long standing possession and the failure of the respondents for production of the sanctioned map.

5. The counsel for the respondent would support the order impugned.

6. I have appreciated the said submissions.

7. The fact remains that the license document which permits the appellant to mange the Industrial Unit speaks of the dimension of the property which comes to around 161.48 meter square. However, it does not substantiate the claim of the appellant that the structure was in existence from the time he was put in possession of the Gala in question. It was for the appellant before entering into the an

agreement of lease to verify the very requirement of sanctioned structure which he has failed to do so. Rather, the appellant could have approved map from the competent authority about the status of the sanctioned structure of the suit property as it is disclaimed the suit premises as authorised one.

8. Mr. Vashi has drawn support from the Judgment of this Court delivered in ***Mohamad Yusuf Abdul Sattar vs. Municipal Corporation for Greater Bombay***¹ on 19th June, 1996 so as to canvassed his contention that the tenants can not be directed to produce the sanctioned map. However, the observations in paragraph 12 of the said judgment are based on the facts therein. It appears that the tenant in the said case was called upon to produce the sanctioned map of the disputed structure as it was claimed that the same was standing prior to 1962 and the tenant was inducted in 1987-88. In the case in hand, it is not the case of the appellant that the respondents has asked him to satisfy the legality of the suit structure for a period prior to, for which he being put in possession of the same. As such the said judgment will be hardly of any assistance in the matter.

9. Rather, from the record it can be inferred that even the appellant was in possession of the area to the extent of 161.48 meter square, that by itself will not lead to drawing inference that the structure is authorised unless his claim is substantiate by the documents issued by the competent authority to that effect.

10. In absence of any such documents, the Court below is justified for not granting the prayer for temporary injunction.

11. As regards to the date of issuance of notice and the date of visit of officer is concerned, even if the same is mentioned to be 17th

¹ Appeal from Order No.712 of 1996

February, 2014, however, that by itself is not legalized the notice for the reasons stated here in above. Even otherwise, the said issue can be appreciated at the time of leading the evidence.

12. That being so, no case for grant of interim injunction is made out, Appeal from Order as such stands disposed of. In view of disposal of Appeal from Order, pending Interim Application also stands disposed of.

13. Mr. Vashi, submits that the order of protection may be kept for abeyance for a period of four weeks.

14. Considering the contention raised and the fact that the interim relief was not in operation for sometime, the same is continued for a period of four weeks from today.

(NITIN W. SAMBRE, J.)