

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

**APPEAL FROM ORDER NO.150 OF 2022
WITH
INTERIM APPLICATION NO.991 OF 2022
IN
APPEAL FROM ORDER NO.150 OF 2022**

Shailesh Shamji Patel

...Appellant/Applicant

Versus

The Municipal Corporation of
Greater Mumbai

...Respondent

....

Mr. S.K. Dubey for the Applicant.

Mr. Santosh Parad for Respondent -MCGM.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 2nd MARCH, 2022.

P.C.:-

1. With consent heard finally at the stage of admission.
2. The Appellant herein has challenged the order dated 21/01/2021 whereby the learned Judge, City Civil Court, Greater Bombay has declined to grant ad-interim relief in respect of the notice under Section 351 of the MMC Act, 1888.
3. Heard the learned counsel for the respective parties. Perused the records.

4. The Appellant claims to be in occupation and possession of premises Gala No.7, 7/12, Pujari Chawl, Opp. Fish Market, Kajupada Pipe Line, Kurla (west). The records indicate that the brother of the Appellant lodged a complaint before Respondent-Corporation alleging that the Appellant had carried out unauthorised construction. Accordingly notice under Section 351 of the MMC Act came to be issued on the premise that the toilet block is unauthorised. The Appellant contends that his father was in possession of the suit premises prior to 1961 and that the toilet block is existing since then. The records prima facie indicate that the Appellant is residing in the existing structure since long. Even otherwise the question whether the structure is authorised or not needs to be decided on merits. Refusal of ad-interim relief will render the notice of motion infructuous.

5. Under the circumstances, the appeal is allowed. The impugned order is set aside. Respondent Corporation not to act upon the impugned notice till final disposal of the notice of motion. The Trial Court is directed to dispose of the notice of motion within a period of six months from the date of receipt of copy of this order.

6. Interim application stands disposed of in view of disposal of the appeal.

(SMT. ANUJA PRABHUDESSAI, J.)

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