

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

**APPEAL FROM ORDER NO.215 OF 2022
WITH
INTERIM APPLICATION NO.1471 OF 2022
IN
APPEAL FROM ORDER NO.215 OF 2022**

Santosh Thowda Shetty

...Appellant

Versus

The Municipal Corporation of
Greater Bombay and Ors.

...Respondents

....

Mr. Jernol Xavier with Ms Carna Xavier i/b. Mr. Hardik Jayesh Desai for
the Appellant.

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

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 11th MARCH, 2022.

P.C.:-

1. With consent heard finally at the stage of admission.
2. The Appellant herein has challenged the order dated 09/03/2021 whereby the learned Judge, City Civil Court, Mumbai has declined to grant ad-interim relief, in respect of a stall under the name of “Jai Maharashtra General Store”.

3. The Appellant herein is carrying business in the said stall situated in Plot No.889 (New), Opposite Mangal Hospital, Swastik Park, Chembur (hereinafter referred to as 'suit structure'). The grievance of the Appellant is that the suit structure is in existence since last four decades and the Respondent -Corporation seeks to demolish the same without following due process of law. The Appellant further claimed that officers of the Respondent-Corporation have also threatened to remove /cancel the license. Based on these assertions, the Appellant has filed a suit for declaration and permanent injunction. The Appellant also filed notice of motion seeking interim relief. The learned Judge held that license in respect of the suit structure has been cancelled and hence by the impugned order, declined to grant ad-interim relief.

4. The learned counsel for the Appellant states that Anil, brother of the Appellant was conducting business in the suit premises since the year 1983 and the Appellant is running business in the suit premises since 2007. He submits that the Trial Court has not considered the documents produced by the Appellant viz. Shop and Establishment Certificate, NA order, etc, which prima facie prove that the suit structure is existing since four decades. He has relied upon decision of this Court in ***Abdul Hasan Shaikh Mansuri vs/ Municipal Corporation of Mumbai and Ors. In First***

Appeal No.2426 of 2005 to contend that once the existence of the structure is proved and the party approaches the Court with limited relief, that the authorities have no other option but to follow due process of law.

5. Per contra, learned counsel for Respondent-Corporation states that the structure is unauthorised and that the same is on footpath. He therefore contends that the Appellant is not eligible for any protection.

6. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

7. The only question for consideration is whether the structure was in existence since long. In this regard, the Appellant has placed on record shop and establishment certificate dated 01/01/1983 which shows the existence of the suit shop at least since 1983. The shop and establishment certificate has been renewed from time to time, which fact prima facie fortifies the contention of the Appellant that he and his brother have been continuously conducting the business in the suit structure. The NA order dated 23/01/2005 also supports the contention of the Appellant about the existence of the structure. The aforesaid documents as well as license issued by Health Department of Respondent

prove that the suit structure has been in existence since last four decades.

8. It is also stated that the license issued by Health Department was cancelled without issuing show cause notice to the Appellant. It is also not in dispute that the Respondents have sought to demolish the suit structure without giving notice to the Appellant and without following due process of law. In case of ***Abdul Hasan*** (supra) this Court (Coram :A.M. Khanwilkar, J. as his Lordship then was) has observed that in such case a limited controversy, which was required to be answered by the Trial Court is whether the suit structure existed on the site, and if so the Authorities would be obliged to take action against such structure only by following the due process of law. It is further held that when the existence of structure is not disputed or indisputable, the authority cannot be permitted to take unilateral action even if the structure is unauthorised, except by following due process of law.

9. Under the circumstances, the Trial Court was not justified in declining the ad-interim relief. The impugned order therefore cannot be sustained. Hence, the appeal is allowed. The impugned order is set aside. Both parties are directed to maintain status-quo in respect of the pending suit premises pending disposal of the notice of motion.

10. The appeal stands disposed of.

11. The civil application stands disposed of in view of disposal of the appeal.

(SMT. ANUJA PRABHUDESSAI, J.)

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