

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

**APPEAL FROM ORDER NO. 34 OF 2022
WITH
INTERIM APPLICATION NO. 192 OF 2022
IN
APPEAL FROM ORDER NO. 34 OF 2022**

Ebraheem Haji Jetha
v/s.
Municipal Corporation of Greater
Mumbai and anr.

.... Appellant

.... Respondents

Mr. Ashok Pande with Mr. Shobhit Shukla for the Appellant.
Mr. Santosh Parad for the Respondent – MCGM.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 09th MARCH, 2022.

P. C. :-

. Heard finally with consent of the parties.

2. The Appellant herein has challenged the order dated 04/03/2021 whereby the learned Ad-hoc Judge, City Civil Court, Greater Mumbai has dismissed the Notice of Motion No.300 of 2021 filed by the Appellant herein to restrain the Respondent – Corporation from taking any action in respect of the suit structure.

3. The Appellant has taken on lease the premises admeasuring 350 sq. feet situated in the lower basement floor of the building named as

‘Purnima’, Walkeshwar Road, Mumbai. The Appellant is in retail business of art and artifacts and he was using the said premises as a godown. The Respondent – Corporation issued a notice dated 29/07/2020 under section 488 of Mumbai Municipal Corporation Act and inspected the premises and subsequently issued notice dated 17/09/2020 under section 55 of MRTP Act alleging that the Appellant had unauthorizedly covered the open space with G.I. sheet. The Appellant was therefore called upon to remove the said structure within 15 days. The Appellant as well as the Society replied to the notice vide reply dated 21/09/2020. By speaking order dated 27/01/2021, the Corporation directed the Appellant to demolish the said unauthorized construction. Being aggrieved, the Appellant filed the Suit for declaration and permanent injunction with Notice of Motion seeking interim relief in respect of the said structure. The Trial Court dismissed the Notice of Motion No.300 of 2021 mainly on the ground that the structure is unauthorized. Being aggrieved by the said order, the Appellant has filed this Appeal.

4. Heard Mr. Ashok Pande, learned counsel for the Appellant and Mr. Santosh Parad, learned counsel for the Respondent. I have perused the records and considered the submissions advanced by the learned

counsel for the respective parties.

5. The records indicate that the Appellant has taken on lease the premises admeasuring 350 sq. feet situated on the basement floor of the building named as 'Purnima'. The Appellant claims that the suit structure is facing Ridge Road and Walkeshwar Road and as such, there was continuous threat of trespass by anti-social elements. The society had therefore closed the said structure with G.I. Sheet.

6. The photographs placed on record indicate that the subject structure was already covered with a terrace roof and was enclosed on three sides by concrete walls. The Appellant has covered the 4th side of the structure with G.I. sheet which is alleged to be unauthorizedly constructed in an open space. As stated above, the existing structure was already covered by a terrace roof and was enclosed on three sides with concrete walls. Thus, prima facie, there is no merit in the contention that the Appellant has carried out any construction in an open space.

7. It is also to be noted that the notice under section 55 of MRTP Act was issued for carrying out unauthorized construction in an open space whereas the speaking to minutes records that the Appellant and the

Society had not furnished documents to prove existence of notice work prior to 1964 which is the basic requirement for residential structure to be in tolerated category. It is neither in the case of the Appellant nor the case of the Respondent – Corporation that the suit structure was used for residential purpose. Be that as it may, the Appellant has denied that the suit structure is a temporary structure. It is submitted the structure is permanent and hence, provisions under section 55 of MRTP Act could not be invoked. The question whether the Appellant has carried out any development of the temporary nature or whether the structure is of permanent nature and the Appellant has right to seek regularization, are questions which are required to be decided on merits. Pending such adjudication, status quo needs to be maintained in respect of the suit structure.

8. In the circumstances and in view of discussion supra, the Appeal is allowed. The impugned order dated 04/03/2021 passed in Notice of Motion No.300 of 2021, is quashed and set-aside. Both the parties are directed to maintain status quo in respect of the suit structure till the disposal of the suit. Appeal as well as Civil/Interim Application stand disposed of in above terms.

PREETI
H
JAYANI
Digitally
signed by
PREETI H
JAYANI
Date:
2022.03.15
14:39:25
+0530

(SMT. ANUJA PRABHUDESSAI, J.)