

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.443 OF 2022
ALONG WITH
INTERIM APPLICATION NO.2844 OF 2022

Mohd. Kais S/o. Mohd. Sayeed Khan] ... Appellant

Vs.

Municipal Corporation for Greater]
Mumbai] ... Respondent

...

Mr. Virendra T. Dubey for the appellant.

Mr. Om Suryavanshi for the respondent-MCGM.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 28TH APRIL, 2022.

P.C. :-

1. The short grievance raised by the appellant in the present appeal is to the effect that the speaking order passed by the Corporation on 28/03/2022 is without consideration of his response on issuance of the impugned notice dated 15/03/2022.

2. The sequence of events reveal that the notice was issued to the appellant in respect of the structure described as *“Unauthorized vertical extension of 1st floor of existing ground floor structure with the help of BM Wall admg. 4.57m X 10.97m & having ht. 3.04m approx.”*

3. On the notice being issued on 15/03/2022, the learned counsel for the appellant states that, before the appellant was able to collect the material and respond to the said notice, the speaking order came to be passed on 28/03/2022.

4. By the said order, the appellant is directed to remove the notice structure within seven days, failing which, the structure shall be demolished by the Corporation.

5. In the interest of justice, an opportunity needs to be given to the appellant to respond to the show cause notice and since the impugned order is passed without considering the stand of the appellant, in my opinion, the Executive Engineer & Designated Officer, ‘N’ Ward of the Corporation shall re-consider the matter afresh, upon the appellant filing his response/reply to the notice, within 10 days from today. Upon such reply being filed, the competent authority shall pass a fresh order taking into consideration the said response/reply.

6. The impugned order dated 28/03/2022 is quashed and set

aside. The Corporation shall not take any coercive action against the appellant, till it passes a fresh order.

7. In the wake of the above order being passed, L.C. Suit No.947 of 2022 pending before the Bombay City Civil Court at Bombay, filed by the appellant has been rendered infructuous and is liable to be dismissed.

8. The appeal is disposed off in the above terms.

9. In view of the disposal of the appeal, the interim application does not survive and is disposed of as such.

[SMT. BHARATI DANGRE, J.]