

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

INTERIM APPLICATION NO. 3483 OF 2022
IN
FIRST APPEAL (ST.) NO. 11363 OF 2022

Shri. Shyam Rajkishore Singh	..Appellant
v/s.	
The Municipal Corporation of Greater Mumbai & Anr.	..Respondents

Adv. Harinder Toor a/w Adv. Subhash Bane for the Appellant.
Adv. Santosh Parad, for the Respondent No.1-MCGM.
Adv. Khan Javed Akhtar, for the Respondent No. 2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 15th JUNE, 2022.

P.C.

1. By this Application the Applicant has sought to restrain the Respondent No. 1 from demolishing the alleged unauthorized construction of first floor referred to in notice dated 29th April, 2015 and speaking order dated 20th May, 2015.

2. Heard, Learned Counsel for the Appellant and Respondent No. 1 Corporation and Respondent No. 2. I have perused the records and considered the submissions advanced by the learned Counsel for the Respective parties.

3. The Appellant, plaintiff in L.C. Suit No. 1330 of 2015, had

challenged the impugned notice issued under Section 351 of MMC Act and speaking order dated 29th April 2015 primarily on the ground that the subject structure was existing since 1953.

4. The records reveal that the the trial Court had initially refused to grant ad interim relief which order was challenged by the Appellant before this Court. By order dated 3rd June, 2015 this Court had granted the ad interim relief. Subsequently, the trial Court allowed the Notice of Motion on 16th November, 2016 and thereby restrained the Respondent-Corporation from implementing the notice under Section 351 of MMC Act and order dated 28th May, 2015, the said order was in operation till the date the Suit was dismissed on merits.

5. The records reveal that by order dated 18th July, 2016 this Court had directed the Respondent-Corporation to produce the sanctioned plan. It is not in dispute that the Respondent-Corporation had not produced the sanctioned plan. The Respondent-Corporation had also not inspected the premises to arrive at subjective satisfaction that the structure sought to be demolished is unauthorized. It appears that the Corporation has issued notice solely on the basis of the complaint made by the Respondent No. 2 who is the subsequent purchaser. Prima facie there no material on record to indicate that the Appellant has carried out any illegal or unauthorized extension. Considering the above facts and that

the interim relief was operating in favour of the Appellant till the date of disposal of the Suit, in my considered view, the subject structure needs to be protected till the Appeal is heard on merits.

6. Hence, Interim Application is allowed in terms of prayer clause a(i).

7. The Respondent-Corporation is restrained from implementing the impugned notice under Section 351 of MMC Act and speaking order dated 20th May, 2015 pending hearing of the appeal.

8. Application stands disposed of.

(ANUJA PRABHUDESSAI, J.)