

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

**APPEAL FROM ORDER No.527 OF 2022
WITH
INTERIM APPLICATION NO.3235 OF 2022
IN
APPEAL FROM ORDER No.527 OF 2022**

Mrs. Indubai Kanhu Phadtare and
Ors.

..Appellants

Versus

The Municipal Corporation of
Greater Mumbai and Ors.

...Respondents.

.....

Mr. Yogesh S. Naidu for the Appellants.

Mr. R.Y. Sirsikar for Respondent No.1-BMC.

Mr. Mayur Khandeparkar with Mr. P.B. Singhvi i/b. M/s. Lex Services
for Respondent No.3.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 14th JUNE, 2022.

P.C.:-

1. With consent, the matter is heard finally at the stage of admission.
2. The Appellant has challenged the order dated 12/05/2022 whereby the learned Judge, City Civil Court at Dindoshi, Borivali, refused the ad-interim relief.
3. Heard Mr. Naidu, learned counsel for the Appellant, Mr. Sirsikar, learned counsel for BMC and Mr. Mayur Khandeparkar,

learned counsel for Respondent No.3. Perused the records and considered the submissions advanced by the learned counsel for the respective parties.

4. The Appellant herein, who is the original plaintiff has filed a suit challenging notice under Section 351 of the MMC Act and speaking order issued by Mumbai Municipal Corporation.

5. The Corporation had issued a notice under Sections 351 of the MMC Act in respect of an unauthorised construction admeasuring 6.63 x 5 x 2.5 mtr in CTS No.221 and 222A opposite Palki Aura Building, Dattapada road, Borivali (east). Subsequently by speaking order dated 21/04/2022 the Corporation directed the Appellant-Plaintiff to remove the said structure within 15 days. Aggrieved by the said notice and order, the Appellant-Plaintiff filed a suit for declaration that the impugned notice is illegal and bad in law. The Appellant-Plaintiff also sought to restrain the Respondent from demolishing the said structure.

6. By the impugned judgment the learned Judge rejected the ad-interim relief interalia on the ground that the Appellant-Plaintiff has failed to show that the said structure was constructed by obtaining

prior permission of the competent authority. The Appellant has placed on record copy of permission dated 23/03/1993, a perusal of which prima facie reveals that the Appellant-Plaintiff had sought permission to repair the structure, which was demolished during communal rights during January-1993. Under the said permission dated 23/03/1993 the Appellant was permitted to repair the structure of 15' x12' x 10' with C.I. sheet wall and A.C. sheet roofing. The said permission prima facie indicates that the said structure has been existing prior to 1993. By the impugned notice the entire structure is sought to be demolished. Considering the fact that the structure has been existing since long, in my considered view status quo needs to be maintained till the notice of motion is decided on merits.

7. Hence, the appeal is allowed. The Appellant-Plaintiff as well as the Respondents are directed to maintain status-quo in respect of the suit structure pending hearing of the notice of motion.

8. The appeal stands disposed of in above terms.

9. Civil /Interim Application(s) if any, stand disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)