

APPEAL FROM ORDER NO.545 OF 2022
WITH
INTERIM APPLICATION NO.3280 OF 2022
IN
APPEAL FROM ORDER NO.545 OF 2022

Mr. Pratap Singh a/w Mr. Shailesh Pal and Viraj Singh for Appellant.

Mr. R. Y. Sirsikar for Respondent No.1 (MCGM).

DATED : 8th JUNE, 2022.

P.C.:-

1. With consent Appeal is heard finally at the stage of admission.
2. Appellant herein, who is the Plaintiff in L.C. Suit (Stamp) No.5632 of 2022 has challenged the order dated 12th May 2022, whereby the learned Judge has refused to grant the ad-interim relief in favour of the Applicant/Plaintiff.

3. Heard learned counsel for the Appellant and learned counsel for Respondent No.1-MCGM. Perused the record and considered the submissions advanced by the advocates for the respective parties.

4. The Appellant had challenged the notice issued under Section 354A of the Mumbai Municipal Corporation Act. It is the case of the Appellant that the structure that is sought to be demolished is existing prior to 1960, whereas the learned counsel for Respondent No.1-MCGM submits that the Appellant had carried out unauthorised construction, which was earlier demolished. He submits that the building which was ground + 2 floors has now been extended to ground + 5 floors.

5. The assessment records produced by the Appellant prima facie reveal that the building is existing since the year 1962, but do not indicate whether the building was ground + 2 floors or ground + 5 floors, as contended by the Appellant. Moreover, there is no prima-facie material at this stage to indicate that the building was demolished and reconstructed. Learned counsel for Respondent No.1-MCGM states that he needs to verify the sanctioned plan and the other records to ascertain whether the original structure was only of ground + 2 floors.

Thus to question whether the structure was ground + two floors or five floors needs to be examined while deciding the Notice of Motion. Until such time status quo needs to be maintained.

6. Under the circumstances, the Appeal is allowed. The impugned order is set aside. Both parties are directed to maintain status quo and the Respondent No.1-MCGM in particular is restrained from demolishing the subject structure pending disposal of the Notice of Motion.

7. Learned Judge is directed to dispose of Notice of Motion as expeditiously as possible and in any event within three months from the date of uploading of this Order.

8. Appeal from Order as well as Interim Application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)