

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

**APPEAL FROM ORDER NO.555 OF 2022
WITH
INTERIM APPLICATION NO.3317 OF 2022
IN
APPEAL FROM ORDER NO.555 OF 2022**

Mohammed Shauaib Bashir Khateeb
and Ors.

...Appellants

Versus

The Brihanmumbai Municipal
Corporation and Anr.

...Respondents

.....

Mr. Praeep Thorat i/b. Mr. Reyden Gonsalves with Ms Eventa A.
Gonsalves for the Appellant.
Mr. R.Y. Sirsikar for BMC.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 14th JUNE, 2022.

P.C.:-

1. The Appellant has challenged the impugned notice under Section 351 (1A) of the Mumbai Municipal Corporation Act, 1888 and speaking order dated 27/04/2022 whereby the Appellant has been directed to remove /demolish the subject structure in 7 days.

2. The impugned notice under Section 351(1A) of the MMC Act, relates to *(i) unauthorised construction of wall in common toilet*

block which is near entrance at plot no.52, Jumma Masjid Trust, Bada Kabrastan, Shrikant Palekar Marg, Marine Line (E), Mumbai -400 002 admeasuring size of 3.0m in length & 3.2 m in height and erection of shop at other side of wall and (ii) unauthorised opening in compound wall near toilet by demolishing partially and erection of MS gate admeasuring size of 3.0m in length and 2.5 m in height at Bada Kabrastan without taken any permission from the competent authority i.e. MCGM”

3. Learned counsel for the Appellant states that the Appellant has closed the opening in the compound wall. He further states that the MS gate referred at sr. No.2 of the impugned notice will be removed within one week. Statement is accepted.

4. Learned counsel for the Appellant states that the land belongs to the public trust managing the burial ground “Bada Kabrastan”. He further states that the wall in common toilet block was constructed during Ramzan and the rear side of the wall was used by the Trust as a counter. He states that the Appellant shall apply to the Corporation within a period of four weeks for regularisation of the said counter and to permit them to use it as a counter.

5. In the light of the said statement, both parties are directed to maintain status-quo in respect of the subject structure at Sr. No.1 notice under Section 351(1A) dated 12/04/2022, pending disposal of the notice of motion.

6. The appeal as well as the civil application stands disposed of in above terms.

(SMT. ANUJA PRABHUDESSAI, J.)

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