

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

APPEAL FROM ORDER NO. 631 OF 2022
WITH
INTERIM APPLICATION NO. 9898 OF 2022

Pankaj Anam & Ors.

..Appellants

v/s.

The Municipal Corporation of Gr. Mumbai
through T Ward Office.

..Respondents

Ms. Shweta Singh for the Appellant.
Mr. R.Y.Sirsikar for the Respondent-MCGM.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 27th JUNE, 2022.**

P.C.

1. With consent heard finally at the stage of admission.
2. The Appellant herein has challenged the order dated 10.06.2022, whereby the learned Judge has refused to grant ad-interim relief in Notice of Motion in L.C.Suit (L) No. 5911 of 2022.
3. Heard learned Counsel for the Appellant and learned Counsel for the Respondent Corporation. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.
4. The records prima facie indicate that on 11.05.2022 the Corporation issued notice to the Appellant under Section 351 of the MMC Act alleging unauthorized construction of garage in Kothari

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Niwas premises, without obtaining valid permission from the Competent Authority. The Appellant did not reply to the said notice, which resulted into passing of speaking order dated 24.05.2022, whereunder the Appellant was directed to remove the unauthorized construction within a period of fifteen days. Aggrieved by the said order and apprehending demolition, the Appellant-Plaintiff filed a Suit with Notice of Motion to restrain the Respondent from demolishing the structure. The learned Judge has dismissed ad-interim relief mainly on the ground that the Appellant-Plaintiff has prima facie failed to prove existence of the structure since prior to the datum line.

5. It is to be noted that the Appellant-Plaintiff has placed on record Agreement dated 22.1.1992, which prima facie indicates that the land belongs to Shree Karachi Gutchi Lohana Narayansarovaria and Lakhpati Mahajan, a society registered under the Charitable Societies Act. By the said agreement the President and Secretary of the said trust had leased the garage in Plot No.65 in favour of the Appellant No.3 Mitesh Hasmukh Anam. The Appellant has placed on record rent receipts, as well as Registration Certificate of the establishment, issued under the Shops & Establishment Act, in respect of Garage No.2 in Kothari Niwas.

6. The material on record prima facie reveals that the structure belongs to the trust, which has not been served with any notice. The

Appellant-Plaintiffs are in possession of the same, since 22.01.1992. Hence, in my considered view, the above structure need to be protected till the Notice of Motion is decided on merits. Hence, the Appeal is allowed. Both the parties are directed to maintain status quo in respect of the subject structure till the Notice of Motion is decided on merits.

7. Parties to complete the pleadings within three weeks.
8. The learned Judge is requested to decide the Notice of Motion within three weeks thereafter.
9. Appeal stands disposed of. Interim Application stands disposed of in view of disposal of appeal.

(ANUJA PRABHUDESSAI, J.)