

PMB

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

**APPEAL FROM ORDER NO.632 OF 2022
WITH
INTERIM APPLICATION NO.9920 OF 2022**

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Gundamma Settappa Pawar ..Appellant
vs.

Municipal Corporation of Greater Mumbai ..Respondent

**WITH
INTERIM APPLICATION NO.16559 OF 2022
IN
APPEAL FROM ORDER NO.632 OF 2022**

Sahadeo Shankar Katke ..Applicant

IN THE MATTER BETWEEN

Gundamma Settappa Pawar ..Appellant
vs.

Municipal Corporation of Greater Mumbai ..Respondent

Mr. Rahul Pandey a/w Ms. Suchita Pandey i/b. M/s. Pandey
and Co. for appellant.

Mr. R. Y. Sirsikar for respondent-MCGM.

Mr. O. P. Singh for intervenor.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 28, 2022.

P.C. :

1. Not on board. Taken on board.
2. Heard learned counsel for the appellant and Mr. Sirsikar, learned counsel appears for the Corporation.

3. In respect of the structure in question, the Municipal Corporation of Greater Mumbai (hereafter "MCGM", for short) issued a notice dated 04.04.2022 under Section 354A of the Mumbai Municipal Corporation Act, 1888 (hereafter "the said Act", for short). The unauthorised vertical extension to the ground floor structure admeasuring (10.8 X 3.6 X 3.04 ht) metres approximately by using M. S. Angels/Channels, B. M. walls is situated at Narendra Bhavsal Chawl, Behind Tiwari Hospital, Near Saileela Society, 90 feet road, Sakinaka, Mumbai. After hearing the appellant and considering the reply of the appellant, the competent authority passed a speaking order dated 24.05.2022 directing the appellant to remove the said unauthorised work within 24 hours.

4. The suit was filed by the appellant before the City Civil Court contending that the structure in question is situated in slum area and therefore, there is no question of the MCGM proceedings against the appellant by issuing a notice under Section 354A of the said Act. The Notice of Motion is pending. The trial Court refused the request for ad-interim

relief holding that to substantiate the contention that the structure in question is situated in the slum area, the appellant did not file the extract of slum cluster list and copy of notification. The trial Court further held that the appellant-plaintiff could not show that the suit premises is 'censused'.

5. Learned counsel for the appellant in the challenge to the impugned order submitted a compilation of documents. The slum cluster list 2015 is produced where at item 1137 the chawl where the structure is situated is mentioned. These documents however were not produced before the trial Court.

6. Learned counsel for the Corporation and also learned counsel appearing on behalf of the intervenor submitted that this document by itself is sufficient to indicate that the suit structure is censused. Learned counsel for the appellant submitted that the application has been made to the competent authority for obtaining requisite documents and for the copy of the notification to demonstrate that the structure is censused and in the slum area.

7. I do not find any reason to interfere with the order passed by the trial Court refusing to grant ad-interim relief in favour of the appellant. However, only in the interest of justice, as learned counsel for the appellant stated that an application has been made for obtaining requisite documents and having regard to the documents which are produced, in my opinion, a limited protection deserves to be granted to the appellant. The Corporation not to enforce Section 354A notice against the appellant for a period of four weeks from today.

8. In the meantime, if the appellant is in a position to produce documents to substantiate his claim, he may apply to the trial Court for appropriate reliefs.

9. It is made clear that the appellant shall not make any additions or alteration to the suit structure as it stands. Learned counsel for the appellant undertakes that no change in the suit structure will be made.

10. With these observations, the Appeal From Order stands disposed of.

11. In view of the disposal of the Appeal From Order

nothing survives for consideration in the Interim Applications and the same stand disposed of. No costs.

(M. S. KARNIK, J.)