

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

**APPEAL FROM ORDER NO. 695 OF 2022
WITH
INTERIM APPLICATION NO. 10342 OF 2022
IN
APPEAL FROM ORDER NO. 695 OF 2022**

Pankaj B. Aggarwal Appellant
v/s.

The Municipal Corporation of Greater
Mumbai Respondent

Mr. Suresh M. Sabrad a/w. Ms. Neha Parte and Mr. Amey
Sawant for the Appellant.
Mr. R. Sirsikar for MCGM.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 13th JULY, 2022.

P. C. :-

. With consent, heard finally at the stage of admission.

2. The Appellant, hereinafter referred to as ‘the plaintiff’ filed Notice of Motion No.2122 of 2015 in L.C. Suit No.1328 of 2015 before the City Civil Court, Greater Bombay apprehending demolition of structure pursuant to notice under Section 351 and speaking order under the provisions of the MMC Act.

3. The subject notice pertains to a structure in CTS No.612/1,

village Kanjur. The said structure shall be hereinafter referred to as 'the suit structure'.

4. The plaintiff claims that the property under Survey No.239 (part) and CTS No.612/1 (part) of Village Kanjur, along with the structure standing thereon was allotted to Nihalchand Chopra and Kishanchand Chopra by allotment order dated 22/10/1958 under the scheme for Displaced Persons (Compensation and Rehabilitation) Act, 1954. The said property and the structure was purchased by M/s. Raj Diagnostic Centre Private Limited through its sole Director Mr. Nilesh Katira, by Indenture of Conveyance dated 04/05/1999. By Deed of Conveyance dated 29/10/2007, said Nilesh Katira sold the said property and the structure to the father of the plaintiff.

5. The plaintiff claims that the suit structure is in existence since 1955. On 10/11/1998, the erstwhile owner had sought permission to repair the suit premises, which was granted by letter/order dated 04/02/1999 subject to conditions in letter dated 15/10/1998. In the year 2011, the sister-in-law of the plaintiff had made an Application for inspection extract of the suit premises which was issued by the defendant by letter dated 13/10/2011. The said Inspection Extract

shows existence of mezzanine floor, office, kitchen, cabin, WC and godown. The plaintiff has denied having carried out unauthorized construction and has contended that he is running business from the suit premises and has been paying property tax to the defendant.

6. It is the case of the defendant that the plaintiff has carried out unauthorized construction of the 1st floor (part), which was noticed on 11/12/2014. The speaking order was passed since the plaintiff was unable to produce any documents to prove that the structure was authorized and legal.

7. The learned Judge has observed that though the documents produced by the plaintiff prima facie prove existence of the mezzanine/ first floor to some extent, the plaintiff has failed to prove that the said structure is authorized or that it was regularized by the defendant. The learned Judge has observed that the plaintiff has failed to prove prima facie case and hence dismissed the Notice of Motion.

8. Heard learned counsel for the respective parties. I have perused the records.

9. The defendant had issued notice under section 351 and passed the speaking order on the premise that the plaintiff has carried out unauthorized construction of the first floor (part) with brick masonry wall, L/C/L ladi coba slab and A.C. sheet. The records prima facie reveal that by Deed of Conveyance dated 29/10/2007, the father of the plaintiff had purchased the property along with the structure admeasuring 225.89 sq. mtrs. The letter dated 10/11/1998 coupled with permission dated 04/02/1999 prima facie proves that the erstwhile owner was permitted to occupy the suit structure subject to the condition mentioned in the Repair Permission letter dated 15/10/1998. The Corporation had also directed the erstwhile owner to give an undertaking that status quo would be maintained in respect of the mezzanine floor till the issue of regularization was decided by the Government. This letter prima facie proves existence of the mezzanine floor since the year 1998. This is further fortified by the Inspection Extract which also prima facie proves that the suit structure consists of ground plus mezzanine floor.

10. The impugned notice indicates that only the part of the first floor is unauthorized. The notice does not identify the said part, which is alleged to be an unauthorized construction. Considering this fact as

well as the fact that the suit structure is existing since long, in my considered view, the structure needs to be preserved till the matter is finally adjudicated on merits.

11. Under the circumstances and in view of discussion supra, the Appeal is allowed. Impugned order is set-aside The Appellant as well as Respondents are directed to maintain status quo in respect of the suit structure pending hearing and disposal of the suit.

12. Pending Applications, if any, stand disposed of in view of disposal of the Appeal.

**PREETI
H JAYANI**

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PREETI H JAYANI
Date: 2022.07.30
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(SMT. ANUJA PRABHUDESSAI, J.)