

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

**APPEAL FROM ORDER NO. 707 OF 2022
WITH
INTERIM APPLICATION NO. 10479 OF 2022
IN
APPEAL FROM ORDER NO. 707 OF 2022**

CHANDRABALI R. CHAUHAN

..APPELLANT

VS.

MUMBAI MUNICIPAL CORPORATION THR.

ASST. MUN. COMMISSIONER P-SOUTH WARD

..RESPONDENT

Mr. M. S. Pandey for appellant.

Ms. Vaishali Chaudhary a/w. Mr. R. Y. Sirsikar for respondent-MCGM.

CORAM : NITIN W. SAMBRE, J.

DATED : 24th NOVEMBER, 2022

P.C.:

1. Heard.
2. While raising challenge in the L.C. Suit No. 1232 of 2019 to notice dated 26/02/2019 issued u/s 351(1) of the Mumbai Municipal Corporation Act, 1881 and speaking order passed thereunder on 28/05/2019, the appellant has taken out notice of motion no. 2625 of 2019 seeking injunction, which is rejected vide impugned order dated 04/07/2022.
3. The submissions of learned counsel for the appellant are, the owner of the suit property has executed certificate thereby

certifying that the appellant is in possession of the same since 1958. In addition, he has invited my attention to the documents viz. the communication issued by Dy. Collector, Enforcement, SRA stating therein that the appellant is qualified to be included in the Annexure-2 as his structure was existing before 1995.

4. In addition he has also relied on alleged rent receipts, the electricity bills etc. so as to substantiate his claim that the structure was in existence since 1958.

5. As such, the contentions of Mr. Pandey, learned counsel for the appellant are, the structure which is used for both commercial and residential purpose was in existence prior to 01/04/1962 i.e. the datum line.

6. He would further urge that there are arguable issues in the suit and as such, the protection needs to be ordered.

7. The prayer is opposed by learned counsel for the respondent-corporation.

8. I have appreciated the submissions.

9. The datum line dated 01/04/1962 of the commercial structure is not a disputed fact. The appellant has relied only on such documents which he needs to be proved during the course of the suit trial. As regards, his qualification under the Slum Act is

concerned, same issues can be gone into independently as the said documents does not justify the claim of the appellant of in possession since 1958.

10. The fact remains that the suit structure is not authorized or sanctioned structure by the respondent-corporation and as such, is rightly termed as illegal and unauthorized structure.

11. That being so, no case for grant of relief is made out. The appeal is devoid of merits and as such, stands disposed of. The interim application also stands disposed of.

12. Ad-interim relief to continue for a period of two weeks by way of last chance.

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(NITIN W. SAMBRE, J.)