

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

***APPEAL FROM ORDER NO.402 OF 2021
WITH
INTERIM APPLICATION NO.3207 OF 2021***

Poonam Harish Sharma ...Appellant
Vs
The Municipal Corporation of Gr.
Mumbai ...Respondent
...

Mr. Chandraprakash K. Tripathi for the Appellant.
Mr. R.Y.Sirsikar for the Corporation.

CORAM : SANDEEP K. SHINDE J.
DATE : APRIL 19, 2022.

P.C. :

Heard Mr. Tripathi, learned counsel for the appellant and
Mr. Sirsikar, learned counsel for the Corporation.

2 The Municipal Corporation of Greater Mumbai vide show-
cause notice under Section 351 of the Mumbai Municipal Corporation
Act, 1888, called upon the Noticee/plaintiff, to show ‘*Sufficient
Cause*’ within stipulated period as to why notice structure should not
be removed or pulled down. Whereafter, Designated Officer of the

Corporation by 'Speaking Order' dated 24th April, 2021 concluded that documents produced by the plaintiff were not establishing existence of the structure prior to 1st April, 1962. Admittedly, there is no building permission granted by the Planning Authority for erecting the suit structure. Therefore, the plaintiff was required to establish, that the structure was in existence prior to datum line.

3 Mr. Tripathi, learned counsel for the appellant, would rely on two notices issued under Section 354 of the MMC Act. One in 2005 and another in July, 2019, to contend that, vide these notices, plaintiff was called upon to produce documents for allotting him the alternate accommodation in lieu of Suit Structure. At any rate, these notices will not help the plaintiff to establish, that suit construction was either authorised by the Corporation or was in existence prior to datum line. In fact, these notices issued under Section 354 of MMC Act were dropped by the Corporation. Fact, remains, in absence of evidence implying existence of suit/notice structure prior to datum line, impugned order cannot be faulted with. Thus, interference in the impugned order is not called for.

4 In consideration of the facts of the case and the evidence on record, I am not inclined to interfere with the impugned order. Appeal is, therefore, dismissed with all applications therein.

(SANDEEP K. SHINDE, J.)