

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

**INTERIM APPLICATION NO. 3969 OF 2021
IN
FIRST APPEAL (ST.) NO. 24011 OF 2021**

Umed Mulji Patel and anr. Applicants
v/s.
The Municipal Corporation of
Greater Mumbai and anr. Respondents

**WITH
INTERIM APPLICATION NO. 3970 OF 2021
IN
FIRST APPEAL (ST.) NO. 24008 OF 2021**

Pramod G. Simaria and anr. Applicants
v/s.
The Municipal Corporation of
Greater Mumbai and anr. Respondents

**WITH
INTERIM APPLICATION NO. 4010 OF 2021
IN
FIRST APPEAL (ST.) NO. 24015 OF 2021**

Bharat Karsan Patel Applicant
v/s.
The Municipal Corporation of
Greater Mumbai and anr. Respondents

Mr. Bhavin Gada a/w. Mr. Chirag Desai and Mr. Aayush Shah
i/b. Solicis Lex for the Appellants/Applicants in all 3 FAs.
Mr. R. Sirsikar for MCGM.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 13th JULY, 2022.

P. C. :-

. By these Applications, the Applicants who are the plaintiffs in the suit have sought to restrain the Respondents from acting upon notice dated 02/09/2002 under section 351 and notice dated 29/11/2010 under section 448 of Mumbai Municipal Corporation Act.

2. The case of the Applicants is that they were in possession of the suit premises as tenants. The said premises were owned by Respondent No.2 and that by registered agreement dated 30/11/2001, the Respondent No.2 has transferred the tenancy rights and sold the premises on receipt of sale consideration mentioned in the agreement. The applicants claim that they had engaged one Ram Gopal Parekh as a contractor to carry out repairs to the suit structures. The Corporation issued notice under section 351 to said Ram Gopal Parekh. The learned counsel for the Applicants states that Ram Gopal Parekh in collusion with the owner filed the suit against the Corporation wherein he entered into consent terms wherein he agreed to apply for regularization of the suit structure. The Corporation issued notice under section 488 for failure to comply with regularization. The said notice was issued in the name of Ram Gopal Parekh as well as the Applicants herein. The Applicants challenged the notice under section

351 as well as 488 of the Act mainly on the ground that they had not carried out illegal construction and further they were not served with the notice under section 351 of MMC Act.

3. By the impugned judgment, the Trial Court dismissed the suit. Apprehending that the Respondent-Corporation may act on the said notice, the Applicants had filed these Applications for interim relief.

4. The records prima facie indicate that the Applicants are in possession of the premises wherein they are carrying on commercial activity. It is not in dispute that the notice under section 351 of the Act was issued to Ram Gopal Parekh who is alleged to be the contractor. The Applicants were not served with section 351 notice and were not heard in the matter. It is also stated that the learned Judge has relied upon certain documents produced by the Corporation even though the Officer of the Corporation who has tendered his affidavit in evidence had not stepped into the witness box and had not subjected himself to cross-examine.

5. Considering the above facts and circumstances, the Respondent-Corporation is restrained from acting upon notice dated 02/09/2002

and 29/11/2010 pending hearing of the Appeal.

6. Interim Applications stand disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

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