

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

**INTERIM APPLICATION NO.312 OF 2022
IN
APPEAL FROM ORDER NO.73 OF 2022**

Ali Akbar Ali Razak Karimulla Teli

...Applicant

Versus

The Municipal Corporation of
Greater Mumbai and Anr.

...Respondents

....

Mr. Virendra T. Dubey with Mr. Rajendra Dubey for the Applicant.

Mr. Santosh Parad for MCGM.

Mr. Jamshed Ansari for Respondent No.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 2nd MARCH, 2022.

P.C.:-

1. The Appellant herein has challenged the order dated 23/10/2021 whereby the learned Judge, City Civil Court, Borivali Division, Dindoshi, Goregaon, Mumbai dismissed the notice of motion No.2919 of 2015 filed by the Appellant in L.C. Suit No.2994 of 2015.

2. Heard learned counsel for the Applicant and learned counsel for Respondent -Corporation. Perused the records and considered the submissions advanced by learned counsel for respective parties.

3. The Appellant had taken out a notice of motion seeking to restrain Respondent-Corporation from demolishing the suit premises pursuant to the notice dated 04/07/2013 and speaking order dated 23/10/2015.

4. The Appellant claims that one Anand Rao Nilaji Mhatre was the original owner of two structures viz. structures admeasuring 11.8 meters x 6.4 meters and 7.2 meters x 2.6 meters respectively made of B.M. Wall and A.C. Sheet roof being House No.611, Patra Chawal, C.T.S. No.1184, Kandiwali (West), Mumbai, hereinafter referred to as 'the suit premises', which was in existence prior to 1961-62 and which is reflected in City Survey Plan. It was stated that the father of the Appellant had also sought permission for repair of the suit premises, which was granted. It is the case of the Appellant that some time in the year 1980, the Respondent-Corporation had earlier issued notice under Section 351 of the Mumbai Municipal Corporation Act. These proceedings were dropped and no order was passed after considering the documents produced by the Appellant. Learned counsel for the Appellant submits that the learned Judge has failed to consider these material facts and has thus erred in declining interim relief.

5. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.
6. The records indicate that Respondent No.2 has purchased the property along with structure in the year 2008. The records prima facie indicates that Respondent No.1-Corporation has issued issued notice. The documents placed on record prima facie indicate that the structures are in existence since long. Corporation had issued notice under Section 351 of M.M.C. Act and proceedings were dropped by the the defendant.
7. Considering the above facts and circumstances, in my considered view the Appellant has made out a case for interim relief. Demolition of the structures would render the appeal infructuous. Hence, the application is granted in terms of prayer clause (a). Pending hearing of the appeal, Respondents are restrained from taking any action pursuant to notice dated 04/07/2013 and order dated 23/10/2015.
8. The application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)