

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

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**APPEAL FROM ORDER No. 934 OF 2019
WITH
INTERIM APPLICATION No. 1224 OF 2019
IN
APPEAL FROM ORDER No. 934 OF 2019**

Raees Jalauddin Khan

...Appellant

Vs.

**The Municipal Corporation of Greater
Mumbai**

...Respondent

*** * * ***

**Mr. P.J. Thorat a/w. J.S. Yadav i/b. B.S. Shukla for
Appellant**

Mr. Santosh Parad for Respondent -MCGM

Coram : Sandeep K. Shinde, J.

Dated: 2nd MAY, 2022.

P.C. :

1. Heard learned counsel for the parties.
2. Briefly stated facts, giving rise to the present Appeal from Order, are as under:-

Vide notice dated 23rd June, 2017, issued under Section 351 of the Mumbai Municipal Corporation Act (MMC Act for short), the Appellant-Plaintiff was called upon to show cause as to why the construction, described in the notice Schedule, should not be

removed or pulled down. In response thereto, Appellant submitted to the Designated Officer;

(i) that he came into possession of the notice structure on 1st April, 2006;

(ii) the suit structure situated on Survey No. 288, which was declared as a 'Slum';

(iii) since Survey No. 288 was declared as a 'Slum', the structure is protected being in existence prior to 1st January, 2000; and produced Shop and Establishment Licence that was issued in the year 2016; and Property Tax bill dated 29th December, 2012.

Designated Officer, vide order dated 28th August, 2017, concluded that documents submitted by the Appellant-Plaintiff did not conclusively prove the existence of the notice structure prior to datum line i.e. 17th April, 1964. Whereafter, the Plaintiff instituted L.C. Suit No. 1761 of 2017 and questioned the validity of the notice under Section 351 of MMC Act and the order passed by the Designated Officer. Pending suit, he moved an application seeking protection to the notice structure till disposal of the suit. Primary contention, while seeking protection was that, structure being erected on 'Slum' land, as per States' Policy, all structures in existence prior to 1st January, 2000 are

protected and tolerable structures and thus cannot be demolished. Trial Court vide order dated 21st December, 2019 declined interim -protection. The said order is challenged in this appeal from order under Order 43, Rule 1(r) r/w 104 of the CPC.

3. Indisputedly, the notice structure is situated on Land Survey No. 288 which was declared as 'Slum' vide notification dated 24th June, 1976. The datum line fixed, for protecting the structures on the slum is 1st January, 2000. The structure described in the notice Schedule, is "ground plus four floors RCC" (emphasis supplied) construction with columns, beams, ladi, coba slab and BM wall admeasuring are 10m x 15 m and height of structure is about 14 m approximately. Mr. Thorat, learned counsel for the Appellant has taken me through the documentary evidence, to contend that since notice structure is situated on a land, which was declared as a 'Slum', the structure needs to be protected, inasmuch as documentary evidence, like Assessment Extract, Shops and Establishment Licence and indicate its existence prior to 1st January, 2000.

5. Mr. Thorat is right in his submission; however, learned counsel appearing for the Corporation would rely on, Government Resolution dated 5th June, 2002, to contend

protection is subject condition set-out in the Resolution and not absolute. I have perused the Government Resolution. This G.R., in clear terms, says that construction on the slum land is not permissible, beyond 14 ft. heights (emphasized). In this case, the notice structure, consist of ground plus four floors (emphasized). Therefore, assuming that notice structure was in existence prior to 1st January, 2000, however, in view of the G.R. dated 5th June, 2002, notice structure being more than 14 ft. height was not tolerable. Moreover, it is evident from the Shops and Establishment Licences that the structure consisting of ground plus four floors is being used for commercial purposes. In consideration of these facts, the suit construction beyond height of 14 ft., is to held as unauthorized and does not qualify the protection. In that view of matter, the Corporation may proceed to remove the unauthorized construction in accordance with law.

6. Appeal from Order is partly allowed in the aforesaid terms and disposed of, including all applications therein.

(Sandeep K. Shinde, J.)