IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.216 OF 2020

ALONG WITH

INTERIM APPLICATION NO.2632 OF 2019

Rakesh Ashok Itape] … Appellant

Vs.

The Municipal Corporation of Greater Mumbai & Ors.]] … Respondents

…

Mr. Ameya S. Mahajan for the appellant.

Mr. Om Suryavanshi for respondent No.1-MCGM.

…

CORAM : SMT. BHARATI DANGRE, J.

DATED : 14TH MARCH, 2022.

P.C. :-

1. Heard the learned counsel for the appellant and the learned counsel for respondent-MCGM.

2. The appellant is aggrieved by the show cause notice dated 28/05/2018 issued by the Assistant Commissioner, 'C" Ward, Mumbai, under Section 351(1) of the Bombay Municipal

Corporation Act, 1888 asking him to show cause as to why the structure indicated in the schedule appended to the said notice, which is in the form of an unauthorized construction on open land at ground floor adjoining the existing structure known as 57/61, Rangari Chawl, Sant Sena Maharaj Marg, 2nd Kumbharwada, Mumbai, shall not be demolished/removed.

3. Pertinent to note that the show cause notice issued under Section 351(1) of the Mumbai Municipal Corporation Act clearly indicates that the unauthorized construction is a shop which is constructed by using brick masonry walls along with M.S. angles and A.C. sheets enclosed with M.S. rolling shutters and this shop is described as the one shown in the sketch adjoining to the existing structure, which was recognized as 57/61 of the Rangari Chawl. The petitioner approached the City Civil Court, challenging the said notice and his Notice of Motion No.3106 of 2018 is rejected on 18/10/2019 by recording that the plaintiff has failed to make out a *prima facie* case in his favour and he falls short of establishing balance of convenience or irreparable loss to him. The said order records as under:

> "The plaintiff had produced the following documents:
>
> (a) Electric Bill.
>
> (b) Bombay Shop and Establishment Registration Certificate.

> (c) Inspection Extract for the year 1992-93.
>
> Admittedly, the plaintiff had not produced the sanctioned plan to show the existence of the notice structure. It was for the plaintiff further to show that the notice structure existed prior to the datum line. Admittedly, the assessment record shows that the plaintiff to have deposited the taxes for the year 1992-93. there is nothing to indicate that the structure existed on datum line.
>
> 8. Considering the documents tendered by the plaintiff, the authorities have rightly came to the conclusion that the plaintiff had failed to show the authorization of the notice structure. No fault can be found with the order of the corporation."

4. The learned counsel for the appellant places reliance upon a communication issued by the Assistant Engineer, Water Works, 'C' Ward dated 11/09/2018 and the same is placed at page No.193 of the proceedings of this appeal.

5. When carefully perused, the communication reveals that it is with reference to a complaint of an illegal water connection in respect of Room No.21-A, First Floor, 59/61, Sant Sena Maharaj Marg. On the complaint being received about the said communication, the following observation is made by the Assistant Engineer.

> *"On going through records of this office, this is to inform you that, no record is found related to water connection feeding to room no.21A, 1st floor. It is seen that, said room was assessed prior to 1961-62 and said structure is chawl like*

> *structure. Hence it seems to be an old unmetered water connection feeding to room no.21A. Hence no action is warranted."*

6. This letter is sought to be projected by the learned counsel for the appellant by submitting that this shows that the structure is standing before the datum line and the room was existing prior to 1961-62.

7. The aforesaid submission of the learned counsel is highly misconceived since Room No.21A refers to in the said communication is located on the first floor of the existing structure i.e. 59/61, Sant Sena Maharaj Marg, as the objectionable portion is construction of a shop on the adjoining land. In any case, this document is not sufficient to establish that the structure was standing before the datum line and, while rejecting the notice of motion, the learned Judge has clearly observed that the appellant has failed to show the authorization of the notice structure sanding before the datum line and the assessment record, which he has produced reflect the taxes that he has deposited for the year 1992-93.

8. In the wake of the above, the appellant could not have raised any grievance against the order rejecting the notice motion. By upholding the same, the appeal is dismissed.

9. The learned counsel for the appellant states that the stay

granted in his favour shall be continued for some time. However, on noticing the apparent misconception, under which the appellant had approached this court, I am not inclined to grant any relief in his favour.

[SMT. BHARATI DANGRE, J.]