

Prajakta Vartak

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

**APPEAL FROM ORDER NO. 17 OF 2023
IN
NOTICE OF MOTION NO. _____ OF 2023
IN
L.C. SUIT (STAMP) NO. 138 OF 2023
WITH
INTERIM APPLICATION NO.165 OF 2023**

Mohammed Ilyas Khan ..Appellant
Vs.
Brihanmumbai Municipal Corporation & Ors. ...Respondents

Mr. M. V. Holamagi for Appellant.
Mr. R. Y. Sirsikar for Respondent Nos.1 to 4/MCGM.
Ms. Tayanya Goswami, AGP for State/Respondent No.5.

**CORAM : G.S. KULKARNI, J.
DATE : JANUARY 11, 2023**

P.C.:

1. This is an appeal filed by the original plaintiff assailing an order dated 04 January, 2023 passed by the learned Judge, City Civil Court at Mumbai, whereby ad-interim reliefs on a draft Notice of Motion have been rejected.

2. The case of the appellant/plaintiff in the suit in question was a challenge to an action being resorted against the appellants under Section 351 of the Mumbai Municipal Corporation Act, 1888 (for short,

the “MMC Act”). The case of the appellant/plaintiff was to the effect that the Municipal Corporation had not followed the required procedure namely of any opportunity of hearing to be granted to the appellant as also no speaking order was passed before any action under Section 351 of the MMC Act could be taken. The learned trial Judge after hearing the parties and considering the documents as placed on record, has formed a prima-facie opinion that no case is made out for grant of ad-interim reliefs.

3. In the above circumstances, the present appeal was moved before this Court on 07 January, 2023 when at the request of learned counsel for Municipal Corporation, the proceedings were adjourned for today. It was directed that in the meantime, the municipal corporation shall not take any coercive action against the premises of the appellant. The proceedings are accordingly listed today. It was expected that as a grievance was made on behalf of the appellant/plaintiff that no speaking order was passed, learned counsel for the Municipal Corporation would verify such position on record of the Municipal Corporation, as to whether proper procedure was followed so as to take an action under Section 351 of the MMC Act against the structure of the appellant/plaintiff. It was also expected that the speaking order as

stated to be passed by the Municipal Corporation would be placed on record of this Court. Today despite sufficient opportunity available to the Municipal Corporation, learned counsel for the appellant states that the concerned officer is still not in a position to locate the record. It is quite surprising that such a serious action under Section 351 is being resorted against the appellant/ plaintiff and at the same time, the record is not available.

4. The Commissioner of the Municipal Corporation is directed to look into such casual approach of the concerned officer of the Municipal Corporation responsible for issuance of the notice under Section 351 of the MMC Act and if it is found that the concerned officer of the Municipal Corporation was acting in the absence of availability of the appropriate record and without following the process of law, in that event, appropriate action against such officer be taken. Such enquiry be undertaken within a period of 15 days from today.

5. As such is the disturbing position on record on the part of the Municipal Corporation, there is no alternative but to relegate the parties to the trial Court so that the notice of motion itself is further adjudicated by the trial court. The Municipal Corporation is directed to file a reply

affidavit to the notice of motion within 10 days from today.

6. The learned trial Judge shall hear the appellant/plaintiff and the respondents/defendants on the notice of motion and pass appropriate orders in accordance with law on or before 20 February, 2023.

7. Till the notice of motion is heard further on ad-interim or interim reliefs, the respondents are directed not to take any coercive action against the premises of the appellant in pursuance of the impugned notice issued under Section 351 of the MMC Act. Ordered accordingly.

8. Disposed of in the above terms.

9. Report in pursuance of the action taken by the Municipal Commissioner shall be placed on record of these proceedings. For compliance, list the proceedings before this Court on 25 January, 2023 (H.O.B.).

10. Interim application does not survive. It is accordingly disposed of.

[G.S. KULKARNI, J.]