

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 164 OF 2022
WITH
INTERIM APPLICATION NO. 1080 OF 2022**

Mrs. Hanifa Ibrahim SindhwaAppellant

V/s.

The Municipal Corporation of Greater
Mumbai ...Respondent

Mr. Rahul Arora i/by. Mr. D.P. Singh, for the Appellant.

Mr. Beni Madhav P. Chatterji, Senior Advocate i/by. Mrs. Smita
Tondwalkar, for M.C.G.M.

CORAM : SANDEEP V. MARNE, J.

DATED : 19 OCTOBER 2023.

P.C. :

1. This is yet another case which depicts a sorry state of affairs in the City of Mumbai where unauthorised eight floors are added to the existing four storeyed building. The Appeal arises out of a challenge to the order dated 15 February 2022 passed by the City Civil Court dismissing Notice of Motion filed for seeking temporary injunction to restrain the Municipal Corporation from taking action against the suit structure. The Plaintiff has instituted

L.C. Suit No. 1327/2022 challenging Notice dated 20 February 2019 issued by the Municipal Corporation of Greater Mumbai under the provisions of Section 354A of the Mumbai Municipal Corporation Act, 1888 as well as the speaking order dated 24 January 2022 passed in pursuance of that notice. The Notice was issued on 20 July 2019 alleging unauthorized erection of columns using R.C.C. material on the terrace of the building i.e. above the fourth floor of the building namely 'Economic House' situated at Professor Shaikh Hasan Marg 1, Chinchbunder, Mandvi, Mumbai. Thus on the date of issuance of the Notice dated 20 July 2019, the owner/occupants had commenced construction above the fourth floor by erecting R.C.C. columns. It must be noted at the very outset that no development permission has been obtained for carrying out any construction beyond fourth floor. It must also be noted that the Municipal Corporation has carried out demolition of unauthorized construction beyond fourth floor from time to time, as is evident from various photographs placed on record. However the shocking state of affairs are to such an extent that Mr. Beni Chatterji, the learned Senior Advocate appearing for the Municipal Corporation has placed on record photographs taken on 6 July 2023 which shows that total 12 floors now exist at the site. Such construction is undertaken by taking disadvantage of the stay granted by the City Civil Court to its own order dated 15 February 2022 for a period of two weeks which has been continued by this Court by its order dated 28 February 2022. The owners/occupants

of the building 'Economic House' have misused the interim orders so passed by the City Civil Court and by this Court by brazenly adding as many as eight floors to the existing structure.

2. Facts of the case are in narrow compass and can be captured from the plaint as follows :

Plaintiff claims that the building 'Economic House' is also known by two other names 'Amin' and 'Maa Rahima Mansion'. He claims that the building has been constructed in the year 1930 and was owned by previous owners who sold and transferred their right, title and interest in the building in Plaintiff's favour by executing Affidavit-cum-declaration on 31 January 2013. Plaintiff claims that the building has been repaired on several occasions in the past. He relies on permission granted by the Municipal Corporation while carrying out repairs to the fifth floor structure on 23 March 1961. Plaintiff claims to have issued a general Power of Attorney on 17 December 2015 in favour of his son who decided to carry out tenantable repairs to the suit building and hired a contractor for carrying out tenantable repairs. The building was scaffolded by wrapping a netted cloth around the scaffolding. That work was illegally treated by the Municipal Corporation as unauthorized construction and Notice dated 20 July 2019 came to be issued under the provisions of Section 354 of the Act of 1888. The Plaintiff filed reply to the notice and produced various documents. After considering Plaintiff's reply to the notice dated 20 July 2019, the

Municipal Corporation passed speaking order dated 31 January 2020. Plaintiff claims that he abandoned the work of tenantable repairs and in the meantime Covid Pandemic broke out. That he hired a new Contractor in December 2012 to complete the tenantable repairs but on 17 December 2021, the officials of the Municipal Corporation carried out demolition at the site. The Plaintiff therefore addressed notice through his Advocate on 17 December 2021 and thereafter filed L.C. Suit No. 2564/2021. The City Civil Court passed order dated 22 December 2021 and disposed of the suit directing the Municipal Corporation to consider the Advocate's notice dated 17 December 2021 as a reply and to pass a fresh speaking order. Accordingly, the Municipal Corporation passed a fresh speaking order on 24 January 2022. The Plaintiff instituted L.C. Suit (St.) No. 1327/2022 challenging the notice dated 20 July 2019 and speaking order dated 24 January 2022. In the suit, Plaintiff tendered a draft Notice of Motion seeking temporary injunction against the Municipal Corporation not to act upon the notice and speaking order. By order dated 15 February 2022, the City Civil Court has rejected the Notice of Motion. The City Civil Court's order dated 15 March 2022 is the subject matter of challenge in the present Appeal.

3. Mr. Arora would appear on behalf of the Appellant-Plaintiff and submit that the notice issued by the Municipal Corporation is totally faulty. He would submit that the notice

alleges unauthorised erection of columns using RCC material on the terrace floor i.e. above 4th floor. That there is no terrace above the fourth floor of the building as the fifth floor of the building 'Economic House' has been in existence for the last several decades. To demonstrate existence of fifth floor of the building, he would rely upon Commencement Certificate dated 23 March 1961 by which permission was granted for repairing fifth floor premises. That since existence of terrace itself is in dispute, there is no question of erecting any columns on such non-existent terrace. He would therefore submit that the notice is clearly faulty and therefore *prima-facie* case existed for grant of temporary injunction in Plaintiff's favour. He would further submit that the Plaintiff was merely carrying out tenantable repairs within the meaning of Section 342 of the Act of 1888, for which no permission from Municipal Corporation is necessary. That the action of the Plaintiff in erecting scaffolding around the building and covering it by cloth net was erroneously presumed by the Municipal Corporation as work of unauthorised construction. Mr. Arora would submit that the City Civil Court has not correctly appreciated the case of the Plaintiff and therefore its order is required to be set aside.

4. *Per-contra*, Mr. Beni Chatterji learned Senior Counsel appearing for the Municipal Corporation would submit that the Plaintiff has taken law in his own hands and has brazenly erected as

many as eight floors over fourth floor structure during the pendency of the present Appeal. He would submit that the Municipal Corporation has not issued any development permission for carrying out such construction. That erection of eight additional floors can, by no stretch of imagination, be treated as tenantable repairs. That the Municipal Corporation has carried out demolition actions at the site from time to time and every time demolition is effected, the Plaintiff once again erects the unauthorised structure.

5. So far as Commencement Certificate dated 23 March 1961 is concerned, Mr. Chatterjee would invite my attention to the speaking order passed by the Municipal Corporation in which it has been observed that the file relating to that document is not available in the Municipal records and therefore the genuineness of that document is clearly questionable. He would pray for dismissal of the Appeal.

6. Rival contentions of the parties now fall for my consideration.

7. The Plaintiff has sought to question the legality of notice dated 20 July 2019 by contending that the notice is factually incorrect on account of non-existence of terrace above fourth floor. The notice alleged following unauthorised construction :-

Schedule-Description of Work

Unauthorised erection of columns using RCC material on the terrace i.e above fourth floor without permission from the Competent Authority at above mentioned address.

8. It is Plaintiff's contention that fifth floor premises in the building already existed as on the date of issuance of the notice and therefore there was no question of erecting any columns on non-existent terrace of the fourth floor. Existence of fifth floor of the building is sought to be proved by relying upon the Commencement Certificate dated 23 March 1961. The permission is shown to have been issued in the name of Mr. D.K. Mistry for carrying out development work of repairs to existing fifth floor of the premises. Since this document was relied upon in reply to the notice, the Municipal Corporation obtained remarks from the office of the Assistant Engineer, Building Permission ('B' Ward) to verify the genuineness of that document. That office has confirmed that no records relating to that document are available. The Municipal Corporation has doubted the authenticity of the Commencement Certificate dated 23 March 1961. Also of relevance is the fact that the Officials of the Municipal Corporation visited the premises and carried out inspection before issuance of notice. They have observed existence of terrace on the fourth floor and erection of R.C.C. columns. Also of relevance is the fact that after issuance of Notice and by the time speaking order was passed on 24 January 2022, Plaintiff had continued unauthorised construction at the site. Site inspection was conducted by the officials of the Municipal Corporation on 26 July 2021 wherein they observed that erection of

columns using RCC material above fourth floor as well as erection of shuttering the work. The Municipal Corporation therefore lodged an FIR with Dongri Police Station on 3 August 2021. The Municipal Corporation thereafter proceeded with demolition action from 21 September 2021 onwards. The Municipal Corporation has placed on record demolition reports alongwith the photographs in respect of action carried out from 21 September 2021 for over three months till 21 December 2021. The demolition reports and the photographs show that massive unauthorized construction was put up by the Plaintiff and it took Municipal Corporation over three months to demolish the same. It appears that the City Civil Court stayed further demolition by its order dated 22 December 2021 directing the Municipal Corporation to consider Plaintiff's reply to the notice and pass a speaking order. Accordingly, the speaking order was passed on 24 January 2022 which led to filing of fresh suit by the Plaintiff in which the Notice of Motion seeking temporary injunction came to be rejected by order dated 15 February 2022. Taking disadvantage of this Court extending the protection, it appears that the Plaintiff has added eight floors to the building in a most brazen manner. From erection of heavy columns at the site, the intentions of the Plaintiff at the time of issuance of notice dated 20 July 2019 were very apparent. The defence of the Plaintiff that he was carrying out mere tenantable repairs is dishonest, false and outrageous. Under the guise of carrying out tenantable repairs, the Plaintiff has brazenly indulged into unauthorised construction of

adding as many as eight floors to the building. In such circumstances, far from granting any relief in favour of the Plaintiff in the present Appeal, the iron hand of law must reach to him with full force. Therefore while dismissing the present Appeal and directing demolition of the entire unauthorised structure, this Court would not shy away from imposing exemplary costs on the Plaintiff and directing strict action to be taken against him.

9. I accordingly proceed to pass the following order :

(i) The Appeal is dismissed by upholding the order of the City Civil Court dated 15 February 2022.

(ii) Plaintiff to pay costs of Rs.10,00,000/- to the Respondent-Municipal Corporation. The Respondent-Municipal Corporation shall forthwith proceed to demolish the entire unauthorized constructed erected by the Plaintiff and recover the costs thereof from the Plaintiff and his son Mr. Hanif Ibrahim Sindhawa.

10. With the above directions, the Appeal is disposed of. With disposal of the appeal, Interim Application does not survive. The same also stands disposed of.

11. After the order was pronounced, Mr. Arora, the learned counsel appearing for the Appellant requests for continuation of the

interim relief for a period of six weeks from today. Considering the nature of findings recorded in the judgment, the request is rejected.

**NEETA
SHAILESH
SAWANT**

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NEETA SHAILESH
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SANDEEP V. MARNE, J.