

Vidya Amin

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

APPEAL FROM ORDER NO. 151 OF 2023

Bhupinder Singh Chandok

... Appellant

Versus

Brihan Mumbai Municipal Corporation & Anr.

... Respondents

Mr. Suresh Pakale, Senior Advocate i/b. Mr. Gurubala Birajdar for the appellant.

Ms. Smita Tondwalkar for the respondent-MCGM.

Mr. Manoj Hulge (JE B&F) M/E Ward present.

CORAM: G. S. KULKARNI, J.

DATED: 02 March, 2023

P.C.

1. Not on board. Upon mentioning, taken on board on a praecipe as moved on behalf of the appellant.

2. This appeal is filed assailing an order dated 18 February, 2023 passed by the learned Judge, City Civil Court at Mumbai whereby on a draft Notice of Motion filed by the appellant/plaintiff, ad-interim relief has been refused. The cause of action for the appellant to file the suit in question was a notice issued by the Municipal Corporation under section 351 of the Mumbai Municipal Corporation Act (for short "**MMC Act**") alleging an unauthorized extension carried out by the appellant/plaintiff by using brick masonry and ladi coba at roof admeasuring 16 X 3 sq. mtr. with height 3 mtrs.

3. Learned counsel for the Municipal Corporation has placed on record the first inspection report, setting out all details of the unauthorized horizontal extension carried out by the appellant by using brickwork masonry and ladi coba at roof. A reply to the showcause notice was submitted by the appellant, in which the appellant has disputed that the structure is unauthorized. As contended on behalf of the appellant in paragraph 3 of the appellant's reply, it was stated that the total area of the plot is above 4000 sq. mtrs. and FSI consumed was about 1/5th of the entire FSI of the plot, leaving a large/balance unused FSI, which according to the appellant was available for future extension which is being proposed.

4. In the peculiar facts of the case, as there is an unconsumed FSI, Mr.Pakale, learned Senior Counsel for the appellant submits that the appellant be permitted to make an application to the Municipal Corporation for regularization of the objected structure. He submits that an application can be made by the appellant within a period of fifteen days from today and which shall be without prejudice to the rights and contentions of the appellant.

5. In my opinion, in the aforesaid facts and circumstances of the case, the suggestion of Mr.Pakale needs to be accepted and more particularly, as there is an unconsumed FSI which is available to the appellant, as contended by Mr.Pakale, and which, according to him, can certainly be considered for the

purpose of regularization of the objected structure. The appeal from order is accordingly disposed of by the following order:-

ORDER

(I) The appellant is permitted to make an application for regularization of the objected structure, within a period of fifteen days from today.

(II) Till the time the applicant's regularization application is decided, the Municipal Corporation shall not take a coercive action against the notice structure.

(III) Needless to observe that if the application is not made by the appellant within fifteen days from today, the Municipal Corporation is free to take such appropriate action as permissible in law so as to take the notice issued by the Municipal Corporation under section 351(1A) of the Act, to its logical conclusion.

6. In view of the above order, Mr. Pakale fairly states that the suit itself can be disposed of.

7. L.C. Suit (St.) No. 2077 of 2023 is accordingly disposed of. Office to inform the Registrar of City Civil Court in regard to disposal of the suit.

8. Disposed of in the above terms. No costs.

(G. S. KULKARNI, J)