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

**APPEAL FROM ORDER NO.969 OF 2023
WITH
INTERIM APPLICATION NO.17606 OF 2023**

Harish Rajiv Sanil ..Appellant
Versus
Municipal Corp. of Greater Mumbai & Anr. ..Respondents

**WITH
APPEAL FROM ORDER NO.970 OF 2023
WITH
INTERIM APPLICATION NO.17607 OF 2023**

Vidavathi Palangandi Krishnan ..Appellant
Versus
Municipal Corp. of Greater Mumbai & Anr. ..Respondents

**WITH
APPEAL FROM ORDER NO.972 OF 2023
WITH
INTERIM APPLICATION NO.17610 OF 2023**

Deepak Omprakash Saxena ..Appellant
Versus
Municipal Corp. of Greater Mumbai & Anr. ..Respondents

**WITH
APPEAL FROM ORDER NO.973 OF 2023
WITH
INTERIM APPLICATION NO.17611 OF 2023**

Mr. Bhupendra Kumar Bhateja (Deceased) & Anr. ..Appellants
Versus
Municipal Corp. of Greater Mumbai & Anr. ..Respondents

**WITH
APPEAL FROM ORDER NO.974 OF 2023
WITH
INTERIM APPLICATION NO.17617 OF 2023**

Ms. Sandhya Wd/o T. N. Singh ..Appellant
Versus
Municipal Corp. of Greater Mumbai & Anr. ..Respondents

**WITH
APPEAL FROM ORDER NO.975 OF 2023
WITH
INTERIM APPLICATION NO.17619 OF 2023**

Ms. Rajkumari Wd/o Bhimsain Lakhani ..Appellant
Versus
Municipal Corp. of Greater Mumbai & Anr. ..Respondents

Mr. Y. K. Tiwari a/w Manee Vishwakarma i/by K. P. Tiwari & Co., for
the Appellant.
Ms. Smita V. Tondwalkar, for the Respondent/BMC.
Mr. K. G. Linje, Sub-Engineer (B & F), P/S Ward – present.

CORAM : SANDEEP V. MARNE, J.

DATE : 5th DECEMBER, 2023

PC.

1. The present appeals challenge orders dated 21st February, 2023 rejecting Notice of Motions filed by appellant/plaintiff seeking temporary injunction in respect of notices dated 7th December, 2019 issued by the Mumbai Municipal Corporation under the provisions of Section 351 of the Mumbai Municipal Corporations Act, 1881.

2. It appears that the Municipal Corporation has issued notices dated 7th December, 2019 in respect of six garages at the Petrol Pump alleging unauthorized construction with brick massonary walls AC Sheets roof and Rolling Shutters.

3. It is plaintiff's case that the structures are in existence prior to the datum line. Reliance is placed by the plaintiff *inter-alia* on the assessment sheets of the Municipal Corporation to show existence of the structures prior to 1961-62. The City Civil Court has proceeded to *prima-facie* reject the assessment sheets by observing that the structure did not match with the one in respect of which the assessment sheets are prepared.

4. I have heard Mr. Tiwari, the learned counsel appearing for the appellant and Ms. Tondwalkar, the learned counsel appearing for the respondent/Municipal Corporation.

5. Perusal of the assessment sheet would indicate that existence of shops/commercial structures ancillary to Petrol Pump admeasuring 467.38 sq.mtrs. If the combined area of 6 notice structures is taken into consideration, it appears that the same would more or less match with the area indicted in the assessment sheet. The dispute is about the date of existence of the structures. Ms. Tondwalkar would submit that the assessment sheet in respect of the structures covered by the sheet is done on 3rd October, 1974. She would submit that the date of first assessment "prior to 1961-

62” indicated in the assessment sheet is only in respect of original structure. In my view, *prima-facie* the existence of the structure for a considerable period of time is demonstrated in the assessment sheet itself.

6. Mr. Tiwari has also relied upon the City Survey map which again shows existence of the garage structures. As of now, it is not known as to when was the survey conducted and the map prepared. Ms. Tondwalkar would submit that the City Survey Office has not indicated existence of structures in red ink and that therefore same cannot be presumed to be constructed prior to the datum line. As of now, there is nothing on record to indicate that only the structures which are reflected in the red ink can be treated as tolerated the structures.

7. Also of relevance is that the appellant/plaintiff is protected initially on account of ad-interim order passed by the City Civil Court and subsequently by ad-interim order passed by this Court. Thus, even though the notices are issued on 7th December, 2019, the appellant/plaintiff appears to be continuously protected for the last four long years. In that view of the matter, ad-interim protection operating in favour of the appellant/plaintiff needs to be extended during pendency of the suit with a request to the City Civil Court to expedite hearing of the suit.

8. The appeals are accordingly disposed of with a request

to the City Civil Court to expedite the hearing of the suits and make an endeavour to decide the same as expeditiously as possible, preferably within a period of one year from today. Till decision of the suits, the ad-interim protection granted in favour of the appellant/plaintiff shall continue to operate.

9. With the above directions, the appeals are disposed of.
10. All the pending interim applications also stand disposed of.

[SANDEEP V. MARNE, J.]