

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (STAMP) NO.7729 OF 2022
WITH
INTERIM APPLICATION NO.304 OF 2023
IN
APPEAL FROM ORDER (STAMP NO.7729 OF 2022
WITH
INTERIM APPLICATION (STAMP) NO.7731 OF 2022
IN
APPEAL FROM ORDER (STAMP NO.7729 OF 2022

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WITH
APPEAL FROM ORDER NO.891 OF 2023
WITH
INTERIM APPLICATION NO.16587 OF 2023
IN
APPEAL FROM ORDER NO.891 OF 2023
WITH
INTERIM APPLICATION NO.305 OF 2023
IN
APPEAL FROM ORDER NO.891 OF 2023

....

Shaikh Murtuza Hussain

....Appellant/Applicant

V/S

The Municipal Corporation of
Greater Mumbai

....Respondent

...

Mr. Ashok R. Pande a/w Mr. Shobhit Shukla for the Appellant/Applicant.
Mr. R.Y. Sirsikar for Respondent-MCGM.

...

CORAM: SANDEEP V. MARNE, J.
DATE : DECEMBER 20, 2023.

P.C.:

1 The challenge in the present Appeals is to the orders dated 10 December 2021 passed by the City Civil Court rejecting the Notices of Motion filed for seeking the temporary injunction against the Municipal Corporation from acting on the notices issued under section 351 of the Mumbai Municipal Corporations Act, 1888.

2 The learned Counsel appearing for the Appellant submits that the trial in the suit is commenced and the Plaintiff has already filed his evidence and documents. At this stage, a partial demolition action was carried out by the Municipal Corporation on 15 December 2023. Therefore, the Appeals are moved before this Court today. Photographs are produced on record which shows partial demolition action being carried out at the suit structures.

3 Appellant has relied upon a block-plan showing existence of the structure. However, in the speaking order passed by the Municipal Corporation the block-plan is rejected on the ground that the same does not show existence of the structure prior to datum line. The City Civil Court has proceeded to ignore the block-plan on the ground that the Appellant/Plaintiff has failed to produce approved plan of suit premises on record. The learned Counsel appearing for the Appellant/Plaintiff invite my attention to the block-plan which bear signatures of Draftsman (SUR) and Sub Engineer (Survey), (City). At this stage it is difficult to ascertain the exact nature of said block-plan. It is Appellant's assertion

that the suit structure has been constructed in accordance with the block-plan approved by the Municipal Corporation. Plaintiff/Appellant need to be given an opportunity to prove this assertion during the course of trial.

4 Since the trial in the suit has already commenced, it is appropriate that the same is taken to its logical conclusion as expeditiously as possible. Partial demolition action has already been conducted at the suit structure. The learned Counsel appearing for the Appellant/Plaintiff, on instructions, makes a statement that the Appellant/Plaintiff shall not carry out any reconstruction at the suit site till the decision of the suit. The statement is accepted.

5 The Appeals are accordingly disposed of with a request to the City Civil Court to expedite the trial in the suit. Till the conclusion of the trial and disposal of the suit, the Municipal Corporation shall not carry out any further demolition action at the suit site. The Appellant/Plaintiff shall also not carry out any construction/reconstruction activity at the suit site and shall maintain status quo in respect of the suit site.

6 With the above directions, both the Appeals are disposed of.

7 In view of the disposal of both the Appeals, the Interim Applications do not survive and the same are disposed of accordingly.

(SANDEEP V. MARNE, J.)