

Sayali Upasani

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

APPEAL FROM ORDER NO.- 341 OF 2023

WITH

INTERIM APPLICATION NO. 4181 OF 2023

Shri. Ghanshyam Laxman Patil

...Appellant/

Org. Plaintiff

Vs.

The Municipal Corporation of Greater

...Respondents/

Mumbai and Others

Org. Defendants

Mr. Anil D. Joshi, for the Appellant.

Ms. Smita Tondwalkar, for the Respondent-MCGM.

CORAM:- N. J. JAMADAR, J.

DATED:- 27th APRIL, 2023

ORDER:-

1) This Appeal takes exception to an order dated 10th April, 2023, passed by the learned Judge, City Civil Court, Greater Bombay in unregistered Notice of Motion in Suit (St) No. 3538 of 2023, whereby the learned Judge declined to grant ad-interim relief. The plaintiff took out the said Notice of Motion to restrain the respondents-defendants from taking action on the basis of

the notice dated 16th February, 2023, issued under Section 351 (1A) of the Mumbai Municipal Corporation Act, 1888 (“the Act, 1888”) and the Speaking Order dated 9th March, 2023, passed by the Designated Officer calling upon the plaintiff to remove the notice structure namely Unauthorized construction of ground floor structure by using brick masonry wall, M.S. Angle and AC Sheet roof at Shree Mookambika Dhaba, Near Chek Naka, Mulund (East) (“the suit property”).

2) The learned Counsel for the Appellant would urge that the learned Judge City Civil Court committed an error in declining to grant ad-interim relief when the plaintiff succeeded in demonstrating that the defendants were bent upon taking action without following due process of law. It was submitted that notice under Section 351 of the Act, 1888 was not properly served nor the speaking order was served on the plaintiff.

3) The learned Judge was not persuaded to accede to the submission on behalf of the plaintiff as there was material to show that the speaking order was duly served on the plaintiff and reasonable opportunity of hearing was given to the plaintiff. The learned Judge further noted that there was neither pleading nor documents to show that the development was carried out

with the approval of the defendant-Corporation. In the absence thereof mere technical objections were of no significance.

4) In my view, the aforesaid approach of the learned Judge is justifiable. No endeavor was made on behalf of the plaintiff to show that either the suit structure is authorised or tolerated. Instead an endeavor was made to show that the action was being taken without following due process of law. Evidently, post notice under Section 351 of the Act, 1888 , the plaintiff filed a reply on 24th February, 2022. The said reply was considered by the Designated Officer and a speaking order came to be passed. The learned Judge found that the speaking order was duly served. In any event, the defendant-Corporation did not take any action till the period specified in the speaking order was over and till the matter was heard by the learned Judge for ad-interim relief. It does not appear that the plaintiff was deprived of an effective opportunity of hearing and that caused prejudice to the plaintiff.

5) The challenge to the impugned action and the order passed by the City Civil Court on the ground that the action was being taken without following due process of law, thus, does not deserve countenance. Resultantly, the Appeal fails.

6) Hence, the Appeal stands dismissed.

7) In view of the dismissal of the Appeal, the Interim Application does not survive and also stands dismissed.

[N. J. JAMADAR, J.]