

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

**APPEAL FROM ORDER NO.538 OF 2022
WITH
INTERIM APPLICATION NO.3255 OF 2022
IN
APPEAL FROM ORDER NO.538 OF 2022**

Mohammad Zuber Mekrani	Appellant
Versus	
Municipal Corporation of Greater Mumbai & Anr.	Respondents

...
**WITH
INTERIM APPLICATION NO.19437 OF 2022
IN
APPEAL FROM ORDER NO.538 OF 2022**

Sunni Muslim Chhota Qabrastan through Trustee Mohammed Aslam	Applicant
IN THE MATTER BETWEEN	
Mohammad Zuber Mekrani	Appellant
Versus	
Municipal Corporation of Greater Mumbai & Anr.	Respondents

Mr. R.A. Shaikh and Ms. Hasan Sayed and Mr. Dev Upadhyay, for Appellant.
Dr. Abhinav Chandrachud i/b Mr. Ashif Shaikh, for Applicant.
Mr. R.Y. Sirsikar, for Respondent Nos.1 and 2-MCGM.

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CORAM : SANDEEP V. MARNE, J.
DATE : SEPTEMBER 26, 2023

P.C.:

1. By this Appeal, Appellant challenges order dated 10 May 2022 passed by the City Civil Court rejecting the prayer for grant of ad-interim relief in

Notice of Motion filed for grant of temporary injunction. Plaintiff has filed L.C. Suit No.1036 of 2022 before the City Civil Court challenging notice dated 27 December 2021 issued by the Municipal Corporation for Greater Mumbai under section 351 of the Mumbai Municipal Corporations Act, 1888.

2 After submission of Reply by the Appellant, the Municipal Corporation has passed speaking order dated 29 March 2023. The speaking order is also subject matter of challenge in the suit instituted by the Appellant. The Appellant filed Notice of Motion for grant of interim injunction during pendency of the suit. By impugned order dated 10 May 2022, the City Civil Court has proceeded to reject the prayer for ad-interim relief.

3 I have heard Mr. Shaikh, the learned Counsel appearing for the Appellant. He would submit that the notice dated 27 December 2021 suffers from several errors. That the notice is issued in the name of 'owner/occupier, M/s. Zuber Welder, Shop No.18A'. That the notice has not been issued to the present Appellant, who is actually the owner and occupier of the suit structure. He would further submit that the structure consist of three portions namely, structure Nos.18, 18A and 18B. That under the garb of issuance of notice only in respect of Shop No.18A, the Municipal Corporation is likely to demolish all the three structures bearing Nos.18, 18A and 18B. He would invite my attention to various documents in support of his contention that the suit structure is a tolerated structure. He would place reliance on photo pass issued by Slum Authorities on 27 November 1990 placed at page 176 of paper book.

He would also place reliance on the water bill issued by the Municipal Corporation pertaining to the year 1999 in respect of the suit structure. He would also rely on the ration card issued in the name of previous owner in respect of the suit structure. He would submit that those documents would indicate existence of the suit structure for a considerable period of time.

4 Mr. Shaikh, would further submit that the area in which the suit structure is located is covered by several slums. There are as many as 350 huts in the area and the impugned notice is issued to selectively to the structure of the Appellant on account of repeated complaints filed by the intervener. That no action is proposed to be taken to the extent of other similarly placed structures. He would place reliance on the judgment of the Apex Court in *Olga Tellis & Ors. vs. Bombay Municipal Corporation & Ors.* (1985) 3 SCC 545 and would contend that the Appellant's slum structure cannot be demolished atleast upto 31 October 2023. Alternatively, he would submit that Appellant be granted limited protection upto 21 October 2023 with a direction to the City Civil Court to decide the Notice of Motion by that date.

5 I have heard Mr. Sirsikar, the learned Counsel appearing for the Municipal Corporation who would oppose the Appeal and support the order passed by the City Civil Court.

6 I have also heard Dr. Chandrachud, the learned Counsel appearing for Intervener in Interim Application No.19437 of 2023. He would submit that

the Intervener, being the owner of the property in question, is an affected party and is required to be heard while deciding the present Appeal. He would submit that the suit structure has been erected in unauthorized manner on the land belonging to the Intervener and that the same is required to be removed instant action.

7 After having heard the submissions canvassed by the learned Counsels appearing for the parties, it is seen that the City Civil Court has at the moment rejected prayer for grant of ad-interim relief in respect of the suit structure. By the impugned notice dated 27 December 2021, the Appellant is accused putting up suit structure bearing shop No.18A without any permission. Though the Appellant has attempted to canvass that three structures bearing Nos.18, 18A and 18B stand together at the site, the notice clearly indicates that the same is issued only in respect of the structure bearing shop No.18A. So far as the other structures bearing shop Nos.18 and 18B are concerned, the notice dated 27 December 2021 does not cover those structures. Therefore, the apprehension sought to be expressed by the Appellant that the Municipal Corporation is likely to demolish the other structures bearing Shop Nos.18 and 18B appears to totally misconceived.

8 I have gone through the documents submitted by the Appellant after receipt of notice dated 27 December 2021. The Appellant has been unsuccessful in proving existence of the structure prior to the datum line. None of the documents sought to be relied upon by the Appellant would

indicate that the suit structure has been in existence prior to the datum line. Reliance of the Appellant on photo pass at page 176 of the paper book would not assist the case of the Appellant as the said photo pass is not issued in respect of Shop No.18A. The water bill sought to be relied upon by the Appellant pertains to the year 1999. Similarly, the ration card issued in the name of previous owner is issued in the year 1993. Both these documents again do not prove that the structure has been in existence prior to the datum line. Thus *prima facie* the Appellant has failed to demonstrate either before the Municipal Corporation or before the City Civil Court about existence of structure prior to the datum line. In that view of the matter, no *prima facie* case was demonstrated by the Appellant for grant of any ad-interim protection during pendency of the Notice of Motion.

9 So far as the reliance of the Appellant on the judgment of the Apex Court in *Olga Tellis* (supra) is concerned, the Apex Court was concerned with pavement dwellers who were censused or who happened to be censused in the year 1976. The Apex Court has directed that the occupiers of such structures are required to be provided alternate premises within the same vicinity. For those occupiers, the Apex Court had directed that the demolition should not be carried out during the monsoon season upto 31 October 1985. In the present case the Appellant has failed to demonstrate the suit structure has been censused in the year 1976. In fact, there is no document on record to indicate existence of suit structure in the year 1976. Therefore, the judgment in *Olga Tellis* (supra) cannot be cited in support of an absolute proposition that in Mumbai city no demolition in respect of slum structures can be carried out

during monsoon season. I am therefore of the view that the City Civil Court has not committed any error in rejecting the prayer of the Appellant for grant of ad-interim relief. So far as the intervener's rights to intervene in the proceedings pending before the City Civil Court are concerned, it is for intervener to file an appropriate application before the City Civil Court seeking intervention in the suit. As and when such application is filed, the same shall be decided by the City Civil Court on its own merits.

10 Accordingly, I do not find any merit in the present Appeal, the same is dismissed without any orders as to costs.

11 In view of the dismissal of the Appeal, both the Interim Applications are also disposed of accordingly.

(SANDEEP V. MARNE, J.)