

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO.366 OF 2023
WITH
INTERIM APPLICATION NO.4515 OF 2023**

Mohammad Danu s/o. Haroon Khan ...Appellant
vs.
The Municipal Corporation of Greater
Mumbai and Another ...Respondents

Mr. R.P. Ojha a/w. Mr. Asit Kedar, for the Appellant.
Ms. Smita Tondwalkar, for MCGM.
Mr. S.K. Dubey, for Respondent No. 2.

CORAM : N. J. JAMADAR, J.
DATE : JUNE 14, 2023

P.C.:

1. Heard the learned counsel for the parties.
2. This appeal is directed against an order passed by the learned Judge, City Civil Court in Notice of Motion No. 2677 of 2016 dated 19th April, 2023 in L.C. Suit No. 1444 of 2016 whereby the proceeding taken out by the appellant/plaintiff to restrain the defendant No. 1- Municipal Corporation from taking action in pursuance of the notice dated 25th April, 2016 issued under section 351 of the Mumbai Municipal Corporation Act, 1888 and a speaking order dated 20th June, 2016 came to be dismissed.
3. It seems that during the pendency of the Notice of Motion, there was ad-interim protection from the year 2016. In the

impugned notice dated 25th April, 2016 the plaintiff/appellant was directed to remove the unauthorized first floor structure constructed at the suit premises. The learned counsel for the appellant submits that it is the claim of the plaintiff that notice structure is in fact a mezzanine floor.

4. Nonetheless the plaintiff is willing to file an application for regularization before the Corporation and depending upon the outcome of the application for regularization take appropriate measures. The learned counsel submits that the ad-interim protection may be continued to facilitate the filing of application and decision thereon.

5. Since the first allegedly constitutes unauthorized structure, it may be expedient to allow the plaintiff time to seek regularization of the said structure if otherwise permissible in law, and, in the meanwhile, continue the interim protection.

Hence, the following order.

ORDER

1] The appeal, thus, stands disposed by granting appellant/plaintiff four weeks time to make an application for regularization of the development at the suit premises.

2] The Municipal Corporation shall take a decision on the application of the appellant within a period of four weeks thereafter.

3] During the said period of eight weeks, the Corporation shall not take any coercive action on the basis of notice dated 25th April, 2016 issued under section 351 of the Act, 1888 and the speaking order dated 20th June, 2016.

4] Till the decision on the regularization application, the appellant shall also maintain status quo as of today as regards the notice structure.

5] In view of the disposal of the appeal, the interim application and the L.C. Suit No. 444 of 2016 also stand disposed.

6] No order as to costs.

(N. J. JAMADAR, J.)