

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 406 OF 2023

Mr. Bajirao Bapur Shinde

....Appellant

Versus

Municipal Corporation of Greater
Mumbai & Anr.

....Respondents

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Mr. K. P. Tiwari i/b Mr. Shailesh Pal for the Appellant.

Ms. Smita Tondwalkar for the respondents - BMC.

Adv. P. R. Pednekar, Asst Eng. (B & F) M/W Ward I/c present.

CORAM : SHIVKUMAR DIGE, J.

DATE : 2nd JUNE 2023.

(Vacation Court)

P.C. :

1. Heard learned counsel for the appellant and learned counsel for the respondents - MMC.

2. Learned counsel for the appellant submits that suit structure is standing since 1997. In spite of that, notice under section 351 of MMC Act 1888, was issued to the appellant stating that the

structure is unauthorized structure. The trial Court has not considered the case of appellant and has rejected the notice of motion of the appellant for interim relief.

3. Learned counsel further submits that if opportunity is given to the appellant to put his side before the trial court in the suit, the appellant can prove that the structure is authorized structure.

4. Learned counsel for the respondents - MMC submits that the structure is unauthorized structure. The notice under section 351 of MMC Act 1888, was challenged by the appellant and after considering the submissions of both the counsel, the trial Court came to the conclusion that the suit structure is un-authorized structure. The trial Court has also observed that the appellant has not produced on record a single document to show that the notice structure is constructed as per permission, sanctioned plan of the MCGM. The assessment produced on record does not support the plaintiff case that the notice structure was in existence prior to the datum line. The trial Court has considered all the facts and on that basis, the order is passed which is legal and valid. Hence, no interference is required in

it and requested to dismiss the appeal.

5. I have heard both learned counsel, perused impugned order passed by the trial Court.

6. It is contention of learned counsel for the appellant that the structure is authorized structure. Whereas, it is contention of learned counsel for the respondents - MMC. that it is unauthorized structure and it is not constructed before the datum line. The trial Court has observed that the documents produced on record do not support the appellant's case, and on that basis, notice of motion is dismissed. In my view, whether the suit structure is authorized or un-authorized is required to be considered by the evidence. If order is passed to maintain status-quo till final disposal of the pending suit filed by the appellant and directions is given to decide the suit on merit would suffice and I pass following order:

ORDER

- i. Appeal is partly allowed.
- ii. The order passed by the trial Court in Notice of Motion No.

4587 of 2023 is quashed and set aside. Both parties shall maintain status-quo till disposal of the pending Suit No. 151 of 2023.

iii. The trial Court is requested to dispose of the pending suit as early as possible preferably within three months after receipt of the order.

iv. Both parties shall co-operate with the trial Court for disposal of the suit.

In view of above appeal stands disposed of.

7. Pending application, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)