



Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO.2960 OF 2021
IN
FIRST APPEAL NO.475 OF 2021**

Wahid Vali-Ahed Qureshi, Vs. The Municipal Corporation of Greater Mumbai	]]]	Applicant Respondent
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Mr. Pradeep Thorat h/f Mr. Janardan Yadav, for Applicant.

Mr. Santosh Parad, for Respondent.

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**CORAM : PRITHVIRAJ K. CHAVAN, J.
RESERVED ON : 19th August, 2023.
PRONOUNCED ON : 25th August, 2023.**

ORDER:

1. Applicant/Appellant's suit bearing L.C. Suit No.2228 of 2013 seeking declaration and perpetual injunction against respondent – M.C.G.M pursuant to a notice issued by it for unauthorized construction came to be dismissed by the trial Court on 1st March, 2021.

2. The applicant has preferred the appeal, *inter alia*, moved an application seeking an order of injunction restraining the respondent from demolishing the suit premises viz "Al Siddique

Mansion” consisting of ground plus 6 floors, admeasuring 32’x18’, situate at 17, Bora Street, Bhendi Bazaar, Mumbai – 400 003.

3. Mr. Thorat, learned Counsel for the applicant submitted that the trial Court has dismissed the suit without considering the material evidence on record, in the sense, the suit premises is constructed prior to year 1961-1962 as per the sanctioned plan and the same has been assessed to municipal taxes. Admittedly, respondent had issued a notice under section 351 of the Mumbai Municipal Corporation Act dated 8th November, 2010. Mr. Thorat would argue that the interim order granted by the trial Court needs to be continued till disposal of the appeal since the applicant has good case on merits. The trial Court had extended the interim relief for a period of four weeks at the time of dismissal of the suit in order to facilitate the applicant to avail legal remedy of appeal before this Court.

4. On the other hand, Mr. Parad, learned Counsel for the respondent has invited my attention to certain glaring aspects which would dis-entitle the applicant to seek relief of injunction. The tax receipt at page 62 describes the subject property as a house with

shops. There is no mention of a building with six floors. The Counsel has also invited my attention to a communication dated 11th May, 2007 on behalf of the appellant to the Assistant Commissioner of the respondent seeking permission to make tenantable repairs to the existing subject premises with ground, mezzanine, first, second, third, fourth and attic floor. The permission was duly granted by the respondent on 26th July, 2007 which is at page No.65. In the said communication, the respondent had clarified and warned the appellant not to carry out any structural repairs under the guise of repairs.

5. Learned trial Court has, therefore, rightly dismissed the suit by making specific observations in paragraph 24 of the impugned judgment which reads thus;

“24. Perusal of Exh.15 i.e the “sanction plan” issued by the Executive Engineer of MCGM shows that it is having approval. It is also having seal, signature & endorsement in that regard of competent authority. It is dtd. 22/6/1959. It denotes that the same is not original sanction of the new structure. On the other hand it is the proposed **repairs** to the existing building No.17. It is merely regarding G+4 floors including mezzanine & attic. Surprisingly, it is not regarding the present notice structure i.e G+6 floors. It

means this plan dtd. 22/6/1959 is not regarding the present notice structure i.e G + 6 floors. Therefore, it is crystal clear that this plan relied by the plaintiff cannot be treated as sanction plan regarding the specific disputed notice structure i.e G+6 floors”.

6. There is nothing on record by which the applicant could justify that there was a sanctioned plan *qua* 6th floor. The electricity meter installed on the 6th floor of the subject property itself is sufficient to construe that an unauthorized construction has been made. As regards extract from C.S sheet No.159 showing C.S. No.3490 the concerned officer has specifically observed that there is no proof of authorization of the notice structure or it's existence prior to the datum line i.e 1st April, 1962 or 17th April, 1964 for tolerating unauthorized residential and commercial works. Even **Exhibit 18** which is the online property card information about CSR No.79 and C.S. No.3490 does not indicate Ground + 6 floors i.e the notice structure.

7. As such, no case is made out for grant of injunction and hence, interim application is rejected. Consequently, interim relief stands vacated.

8. Application is disposed of.

[PRITHVIRAJ K. CHAVAN, J.]