

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 664 OF 2023
ALONGWITH
INTERIM APPLICATION NO. 14514 OF 2023**

Shahnaz Irfan Shaikh and Ors.

....Appellant

V/s.

Brihanmumbai Municipal
Corporation, thr. Assistant
Commissioner, L-Ward and Anr.

....Respondent

Mr. A.U. Bobade i/by. Mr. Bharat A. Puneekar, for the Appellant.
Mrs. Smita Tondwalkar, for the Respondent

CORAM : SANDEEP V. MARNE, J.

DATED : 8 SEPTEMBER 2023.

P.C. :

1. By this Appeal, Appellant challenges order dated 26 July 2023 passed by the City Civil Court dismissing Notice of Motion No. 2666/2012. Appellant has filed suit challenging the notice dated 16 June 2012 issued in respect of the suit structure. In the suit, Plaintiff filed Notice of Motion seeking temporary injunction. The City Civil Court has proceeded to reject the Notice of Motion for temporary injunction.

2. The learned counsel for the Appellant would contend that the Appellant produced before the City Civil Court various documents to

prove that the suit structure existed prior to the datum line. He would submit that despite production of such documents, the City Civil Court has erroneously held that Plaintiff could not prove existence of the structure prior to the datum line. He would further submit that the land on which the structure is located, has not been declared as a slum area. However, the City Civil Court has erroneously relied on the judgment of this Court in the case of High Court on its Own Motion (In the matter of Jilani Building at Bhiwandi) v. Bhiwandi Nizampur Municipal Corporation, in Suo Motu PIL No.01 of 2020 decided on 26 February 2022. He would further submit that the Appellant also produced before the City Civil Court various receipts to show that a claim was raised for identifying the suit structure as a slum. He would submit that the structure has been in existence for a long time and needs to be protected during the decision of the suit.

3. *Per-contra*, Ms. Tondwalkar the learned counsel appearing for the Respondent-Municipal Corporation would oppose the Appeal and support the order passed by the Trial Court.

4. After having considered the submissions canvassed by the learned counsel for the parties, it is seen that after issuance of the notice dated 16 June 2012 by the Municipal Corporation under Section 351 of the Mumbai Municipal Corporation Act, Appellant filed reply dated 26 June 2012 and relied upon several documents. The Municipal Corporation has considered the documents submitted by the Appellant

and has passed a speaking order dated 28 August 2012. After considering all the documents, the Assistant Commissioner, 'L' Ward, has recorded a finding that the Appellant could not prove existence of the notice structure prior to the datum line of 17 April 1964.

5. In support of his contention, the Appellant has relied upon copy of Pension Pay Order issued by the Central Railways showing the date of Appellant's entry into service as 8 March 1963 and his residential address as 'Room No.1, Abba Gani Chawl, Opp. New Mill Road, Tanaji Chowk, Kurla (West), Mumbai-400 070'. It is on the basis of the Pension Pay Order that the learned counsel for the Appellant has attempted to demonstrate that the suit structure has been in existence prior to the datum line of 17 April 1964. However, the pension pay order has been prepared at the time of retirement of the Appellant from service on 31 October 2001. Therefore, the place of residence of the Appellant at the time of his retirement on 31 October 2001 has been reflected in the Pension Pay Order. The Pension Pay Order at the highest would be relied upon to prove the place of residence of the Appellant as on 31 October 2001. The same would, in no manner, prove that the suit structure was in existence as on 8 March 1963, when the Appellant entered into service.

6. Apart from the Pension Pay Order, the Appellant has not produced any other document to show existence of the suit structure prior to the datum line. The other documents relied on are after the

datum line of 17 April 1964.

7. So far as reliance of the City Civil Court on the judgment of ***High Court on its Own Motion*** (supra), the same is relied on by the City Civil Court only to deal with a suggestion sought to be put by the Appellant that the structure could be covered by slum area. In his reply filed to the Notice of Motion, the Appellant did rely upon copies of applications/receipts for issuance of photopass and census certificate. It is by relying upon those documents that the Appellant attempted to prove before the City Civil Court that the suit structure can be covered by slum area. It is with a view to deal with this defence taken by the Appellant that the City Civil Court relied upon the judgment of this Court in ***High Court on its Own Motion*** holding that even in slum area, the Municipal Corporation is empowered to take action against the unauthorized structures.

8. Resultantly, no error can be found in the order of the City Civil Court. The Appeal, being devoid of merits, is dismissed without any orders as to costs. With dismissal of the Appeal, Interim Application No.14514/2023 taken out for stay does not survive. The same is disposed of as having become infructuous.

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SANDEEP V. MARNE, J.