

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

**APPEAL FROM ORDER NO. 655 OF 2023
WITH
INTERIM APPLICATION NO.14450 OF 2023**

Vithoba Chandrakant Khedekar	...Appellant
Versus	
Municipal Corporation of Greater Mumbai & Another	...Respondents

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Mr. S. S. Redekar a/w. Mr. Ajit S. Hodage for the Appellant.
Mrs. Smita Tondwalkar for the Respondent-MCGM.

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CORAM: SANDEEP V. MARNE, J.

DATE : 23 AUGUST 2023.

ORAL ORDER:

1. In this appeal appellant challenges order dated 09 August 2023 passed by the City Civil Court rejecting Notice of Motion No.2793 of 2023 filed by the Appellant seeking temporary injunction. The suit has been instituted by the Appellant-Plaintiff challenging notice dated 06 April 2022 issued by the Municipal Corporation for Greater Mumbai under provisions of Section 351(1)(A) of the Mumbai Municipal Corporation Act 1988. He is also challenging the speaking order dated 17 July 2023.

2. After hearing learned counsel appearing for the parties, it appears that the area of the shop, which is in possession of Appellant-Plaintiff in capacity as tenant thereof, is 7.6 sq. mtrs. It appears that there is additional extension to the shop adm. 1.76 sq. mtrs.

3. Reliance is placed on letter dated 18 April 2023 issued by the Tax Assessment and Collection Department of the Municipal Corporation. In that letter it is confirmed that Shop No.8 has been assessed prior to 1961-62 and the the date of first assessment in respect of extended portion is 06 April 2022. The City Civil Court has rejected the interim injunction for the reason that the extended portion has been assessed on 06 April 2022. In the “Description and Details of Actual Value Calculation Annexure A” of the Municipal Corporation, both the areas of original shop of 7.6 sq. mtrs and extension adm. 1.76 have been separately shown.

4. Learned counsel appearing for Appellant fairly submits that the appellant shall not claim any protection in respect of structure beyond the original shop No.8 adm. 7.6 sq. mtrs. That the Appellant does not claim any interim protection in respect of extension of 1.76 sq. mtrs. Thus, Municipal Corporation will be able to demolish any extension to the shop beyond the area adm. 7.6 sq. mtrs. in pursuance of the notice dated 06 April 2022.

5. In that view of the matter the present appeal can be disposed of by granting liberty to the Municipal Corporation to act on the notice

dated 06 April 2022 only in respect of area over and above the shop area of shop No.8 of 7.6 sq. mtrs.

6. Accordingly the appeal is disposed of by granting temporary injunction restraining the Municipal Corporation from demolishing any portion of shop No.8 which falls within the area of 7.6 sq. mtrs. Any extension to the shop No.8 beyond the area of 7.6 sq. mtrs can be demolished by the Municipal Corporation in pursuance of notice dated 06 April 2022. Interim protection shall continue to operate in favour of the Appellant-Plaintiff during pendency of the suit. Impugned order of the City Civil Court shall stand modified to this extent.

7. With the above directions, appeal is disposed of.

SANDEEP V. MARNE, J.

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