

Ghuge

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

**FIRST APPEAL NO.292 OF 2019  
WITH  
CIVIL APPLICATION NO.4031 OF 2018**

Shivaji Murlidhar Pansare ... Appellant  
V/s.  
The Municipal Corporation of Greater  
Mumbai. ... Respondent

Mr. Ashok Saraogi for the appellant.

Mr. Santosh Parad for Respondent/MCGM.

**CORAM : AMIT BORKAR, J.**

**DATED : JANUARY 25, 2023**

**P.C.:**

1. The appeal arises out of disposal of a suit challenging under Section 96 of Civil Procedure Code, 1908. The subject matter of notice was enclosure of part terrace in total ad-measuring 1695 sq.ft situated at Minal Industrial Estate, Abyudaya Nagar, Kalachowky, Mumbai 400 033.
2. The learned Trial Court dismissed the suit.
3. Mr. Ashok Saraogi, learned advocate for the appellant on instructions states that the appellant seeks permission to withdraw challenge to notice under Section 351 of Mumbai Municipal Corporation Act, 1888 and intends to file application for regularization under Section 53(3) of Maharashtra Regional Town Planning Act, 1966. Appellant is permitted to withdraw suit and

appeal challenging in this under Section 351 which is the subject matter of L.C. Suit No.985 of 2011.

4. The appeal is disposed of as withdrawn with liberty as under:-

a) The appellant is permitted to file application for regularization of structure which was the subject matter of notice dated 11<sup>th</sup> September, 2009. The application shall be filed within Six (6) weeks from today. If, such application is filed within Six(6) weeks from today, the appropriate authority exercising power under Section 53(3) of Maharashtra Regional Town Planning Act, 1966. Act shall take decision as to whether application for regularization is to be granted or not.

b) The said authority shall decide such application for regularization within Eight (8) weeks from the date of receipt of such application.

c) The appellant shall file undertaking before this court within Four (4) weeks from today that he on his own will demolish the construction which is the subject matter of notice dated 11<sup>th</sup> September, 2009 within Two (2) weeks thereafter in case his application for regularisation is rejected.

d) In case the applicant fails to file application for regularization or the applicant fails to demolish the construction in case the authority rejects the application for regularisation, the Municipal Corporation shall be at

liberty to demolish the construction and to recover the cost of the same from the appellant.

e) Till the application for regularisation is decided by concerned authority and in case decision is adverse to Applicant, then Two(2) weeks from the date of such decision, No action for demolition of structure referred above shall be taken.

5. The First Appeal stands disposed of in the above terms. No costs.

6. As the First Appeal stands disposed of then the Civil Application does not survives.

**(AMIT BORKAR, J.)**