

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.9 OF 2017
WITH
CIVIL APPLICATION NO.12 OF 2017
IN
APPEAL FROM ORDER NO.9 OF 2017

Shagun Hospitality Private Limited	... Appellant
Versus	
The Municipal Corporation of Greater Bombay and Anr	... Respondents

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Mr. Carlos Joel, i/b Ms. Gurubala Birajdar for Appellant.

Mr. Shridhar Patil with Ms. Smita V. Tondwalkar, for Respondents-
MCGM.

...

CORAM : SANDEEP V. MARNE, J.
DATE : 29 NOVEMBER 2023.

P. C.:

. By this Appeal the Appellant challenges order dated 29 November 2016 passed by the City Civil Court rejecting Notice of Motion No.2938 of 2016.

2. Plaintiff has instituted Long Cause Suit No.679 of 2016 challenging the notice issued by the Municipal Corporation under the provisions of section 351 of the Mumbai Municipal Corporation Act, 1888 on 3 February 2016.

3 During pendency of the present Appeal, this Court has continued the ad-interim protection granted by the City Civil Court and the interim order granted by this Court on 23 December 2016 continues to operate for the last about seven years.

4 Mr. Carlos, the learned Counsel appearing for the Petitioner would submit that during pendency of the present Appeal, the Plaintiff has filed a proposal with the Municipal Corporation for regularization of the structure. He has placed on record a compilation of documents. According to him the Respondent-Municipal Corporation, after issuance of NOC by MHADA, had already sanctioned the lay-out by amalgamation of the three CTS numbers. According to Mr. Carlos since the lay-out has already been sanctioned, regularization of the existing structure of the Plaintiff would be a mere formality, in view of the fact that the Plaintiff is the owner of the land beneath the structure and is entitled to FSI required for retention of notice structure. He would draw my attention to the letter dated 28 November 2023 of Licensed Surveyor with regard to proposal for regularization of internal additions and alterations to the building known as 'Status Restaurant and Shagun Banquet'. According to Mr. Carlos the proposal is pending with the office of the Chief Fire Officer of the Municipal Corporation.

5 On the other hand the learned Counsel appearing for the Respondent-Municipal Corporation would submit that no regularization proposal has indeed been filed by the Plaintiff. He would place reliance on the letter dated 13 October 2023 of the Executive Engineer (Building Proposals) City-III.

6 Perusal of the documents in the compilation produced by Mr. Carlos would indicate that after sanction of the lay-out the regularization proposal appears to have been submitted by the Plaintiff with the Respondent-Municipal Corporation. The flowchart produced alongwith the compilation would indicate that the proposal is pending with the office of the Chief Fire Officer of the Respondent-Municipal Corporation.

7 In the event the Municipal Corporation approves the proposal for regularization of the notice structure, the entire controversy involved in the suit would come to an end. On the other hand, if the Municipal Corporation rejects the proposal for regularization, the Notice dated 3 February 2016 can be implemented, subject to the remedies available to the Plaintiff in respect of the decision refusing the regularization proposal.

8 In my view, therefore the present Appeal need not be kept pending any longer. The Appeal is accordingly disposed of by directing the Respondent-Municipal Corporation to take a decision on regularization proposal submitted by the Plaintiff as expeditiously as possible preferably by 31 December 2023. In the event the Respondent-Municipal Corporation grants the regularization proposal, the impugned Notice would automatically be rendered infructuous. If on the other hand, the Municipal Corporation rejects the proposal for regularization, the Plaintiff would be at liberty to exercise the remedies available in law with regard to the rejection order. The Respondent-Municipal Corporation would also be at liberty to execute the Notice dated 3 February 2016 in the event of rejection of the regularization proposal. Till the regularization proposal of the Plaintiff is decided and for a further period of two weeks from the date of communication of the decision, the *ad-interim* order granted by this Court shall continue to operate.

9 With the above observations, the Appeal is disposed of.

10 In view of the disposal of the Appeal, the Civil Application does not survive and the same is disposed of accordingly.

SANDEEP V. MARNE, J.