

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

APPEAL FROM ORDER NO.958 OF 2023

Laxman Narayandas Ahuja	... Appellant
Versus	
The Municipal Corporation of Greater Mumbai	... Respondent

...

Adv. Yahya Ghoghari a/w. Mr. Mustafa S. Shamim, Ms. Apeksha Sharma
i/b. Shamim & Co. Advocates for Appellant.
Ms. Smita Tondwalkar, for Respondent-MCGM.

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

P. C.:

. Admit. With the consent of learned counsels appearing for the parties the Appeal is taken up for hearing.

2. By the present Appeal, the Appellant challenges Order dated 06 November 2023 passed by the City Civil Court thereby rejecting Notice of Motion No.3040 of 2012 filed by the Plaintiff seeking temporary injunction to restrain the Municipal Corporation from implementing Notice dated 01 August 2012 issued under the provisions of Section 351 of the Municipal Corporation Act 1888 as well as the speaking Order dated 13 September 2012.

3. I have heard Mr. Ghoghari, the learned counsel appearing for

Appellant and Ms. Tondwalkar, the learned counsel appearing for Respondent-MCGM.

4. Perusal of the impugned Notice dated 01 August 2012 would indicate that the same is issued only in respect of alleged unauthorized extension at front side of the Patra Shed. It is alleged in the Notice that the extension to the Patra Shade is carried on by constructing a BM Wall, MS grill & AC Sheet roof. *Prima facie* it appears that the original structure is authorised since the Notice did not alleged unauthorised construction in respect of original structure. The allegation is only in respect of alleged extension to the original structure. The Plaintiff has also relied upon the assessment bill dated 10 May 1991 which shows existence of the structure prior to 1961-62. It is not clear whether the entire structure including the extension existed prior to 1961-62 or the Plaintiff has carried out the extension to the original structure subsequently. This is something which needs to be established at the time of the trial.

5. It must be noticed here that the impugned Notice was issued by the Municipal Corporation on 01 August 2012. The Plaintiff was protected by *ad-interim* Order passed by the City Civil Court which operated for 11 long years and till the Notice of Motion rejected on 06 November 2023. The *ad-interim* relief has been further extended by the City Civil Court up to 28 November 2023. Considering the nature of unauthorised construction alleged in the Notice and also the fact that *ad-interim* protection operated in favour of the Plaintiff for more than 11

years, it is appropriate that the same is continued till decision of the suit. The trial of the suit is required to be expedited by the City Civil Court. Accordingly the Appeal succeeds. Order dated 06 November 2023 passed by the City Civil Court is set aside. The *ad-interim* Order granted by the City Civil Court on 28 September 2012 shall continue to operate till disposal of the suit. The City Civil Court is requested to expedite the hearing of the suit and to make an endeavor to dispose the same as expeditiously as possible, preferably within a period of 18 months from today. With the above directions the Appeal is disposed of.

SANDEEP V. MARNE, J.

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