

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

**APPEAL FROM ORDER NO.959 OF 2023
WITH
INTERIM APPLICATION NO.17484 OF 2023**

Navyug Timber Trading Company & ors. ... Appellants
Versus
The Municipal Corporation of
Greater Mumbai ... Respondent

...

Mr. Ashok Pande a/w. Shobhit Shukla for Appellant.
Ms. Smita V. Tondwalkar, for Respondent-MCGM.
Mr. Devendra Pawar, Jr. Engineer, Building & Factory 'T' Ward – present
in Court.

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

P. C.:

. By this Appeal the Appellant challenges Order dated 22 November 2023 passed by the City Civil Court refusing to grant *ad-interim* relief in favour of the Appellant-Plaintiff. The Appellant-Plaintiff has instituted L.C. Suit No.2780 of 2023 challenging Notice dated 11 April 2022 issued under provisions of Section 55 of the Maharashtra Regional and Town Planning Act 1956 as well as speaking Order dated 20 June 2022. It appears that Municipal Corporation has also issued a separate Notice dated 07 November 2023 informing Plaintiff that the unauthorised construction shall be demolished on 09 November 2023.

Plaintiff has accordingly filed draft Notice of Motion in his suit seeking temporary injunction to restrain Municipal Corporation from acting on the Notice dated 11 April 2022 and speaking Order dated 20 June 2022. By Order dated 22 November 2023 the City Civil Court has refused to grant *ad-interim* relief in favour of the Plaintiff.

2. I have heard Mr.Pande, the learned counsel appearing for Appellant-Plaintiff and Ms. Tondwalkar, the learned counsel appearing for Respondent-MCGM.

3. Perusal of the Notice dated 11 April 2022 would indicate that the same alleges unauthorised enclosure of open space in the building for storage of wood material near left hand side entry of Navinjyot building by erecting M.S. Gate and M.S. Patra. Thus, the allegations against the Plaintiff in the Notice dated 11 April 2022 is not just erection of unauthorised structure in the form of M.S. Gate and M.S Patra but unauthorised use of open space of the building for storage of wooden material at the left hand side in the building. Plaintiff claims that he has been given tenancy rights by the landlord not just in respect of the shop but also the adjoining open space. Reliance is placed in this regard on various rent receipts beginning from 04 November 1993. Reliance is also placed on electricity bill to show that there is an electricity connection in respect of the adjoining open space described as 'Godown'. It is by relying on these documents that the Plaintiff contends that he has been using the alleged open space for storage of wooden material for last

several years in pursuance of the tenancy rights created in his favour by the landlord.

4. It appears that the Municipal Corporation has received a Complaint dated 18 November 2021 from Mr. Joshi alleging closure of exit gate to the building. It appears that a Critical Care Unit Hospital is being operated in the building and the Complainant alleged that there is no exit gate to the building on account of closure of open space by the Plaintiff.

5. The Plaintiff will have to prove before the City Civil Court that the open space, in respect of which notice is issued, does not form part of common amenities / open space / exist gate of the building. In the event Plaintiff fails to prove, by production of sanctioned plan that the open space used by him does not form part of common amenities / open space / exit gate for the entire building, he will not be entitled for grant of interim injunction. If, on the other hand, Plaintiff proves that the space enclosed by him does not form part of the common amenities / open space / exit gate of the building in any manner, he may be justified in relying on the rent receipts to prove his tenancy in respect of such open space. As of now, the Plaintiff has proved by production of rent receipts and electricity bills that he has been occupying space for substantial period of time. Whether such occupation is authorized or otherwise is something which needs to be determined while deciding the Motion finally. In that view of the matter, till the Motion is decided finally,

Plaintiff deserves to be protected. However it is made clear that in the event, the City Civil Court comes to the conclusion that the space enclosed and being used by the Plaintiff forms part of common amenities / open space / exit gate of the building, the City Civil Court would be justified in declining temporary injunction to the Plaintiff.

6. Present Appeal is accordingly disposed of by requesting City Civil Court to decide Plaintiff's Notice of Motion for temporary injunction finally in an expeditious manner preferably within a period of 03 months from today. Till the decision of the Notice of Motion, the Municipal Corporation is restrained from acting on the Notice dated 11 April 2022 and speaking Order dated 20 June 2022. With the above directions, the Appeal is disposed of. Since the Appeal is disposed of, nothing survives in the Interim Application and it is also disposed of.

SANDEEP V. MARNE, J.

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