

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

**APPEAL FROM ORDER NO. 126 OF 2024
WITH
INTERIM APPLICATION NO. 1532 OF 2024
IN
APPEAL FROM ORDER NO. 126 OF 2024**

M/s. Ami Housing Limited	..Appellant
Vs.	
Urmila Mahesh Chauhan and Ors.	..Respondents

Mr Sanjiv Sawant a/w. Heramb Kadam a/w. Bhavana Umredkar
a/w. Samiksha Mane, for the Appellant.

Mr Pradeep Thorat i/b. Ashutosh Shukla a/w. Enait Shaikh , for
Respondents No.1 to 4.

Ms Smita V. Tondwalkar, for Respondents No.5 & 6 / MCGM.

CORAM : R. N. LADDHA, J.

DATE : 7 MAY 2024

P.C.

. The events leading to the present Appeal from Order are as follows: On 7 November 2016, respondent No.5 issued a notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 ('MMC Act') to Mr Pritamlal Chauhan. The notice required him to show sufficient cause for not removing an unauthorised extension of Room No.B-3 (referred to as 'the structure'), situated at Madhav Kunj, Ghatkopar West, Mumbai. The extension was

constructed with B.M. Wall and A.C. Sheet roof. Mr Mahesh Chauhan (original plaintiff), son of the late Mr Pritamlal Chauhan, denied the existence of any unauthorised extension. Subsequently, on 10 April 2017, respondent No.5 issued a speaking order directing the original plaintiff to cease using the structure and remove the unauthorised work within seven days. Failure to comply would result in the demolition of the structure by respondent No.5. The original plaintiff challenged this action before the City Civil Court, Mumbai, in a suit bearing L.C. Suit No.951 of 2017, wherein he filed a notice of motion bearing No.1805 of 2017 under Rules 1 and 2 of Order XXXIX of the Code of Civil Procedure, 1908 (for short, 'CPC'). By an order dated 10 January 2024, the trial Court restrained respondent No.5 from demolishing the structure while the suit was pending. Aggrieved and dissatisfied, the appellant, who is the owner of the land where the structure stands, has now approached this Court by filing the present appeal.

2. I have heard Mr Sanjiv Sawant, the learned Counsel representing the appellant, Mr Pradeep Thorat, the learned Counsel representing respondents No.1 to 4 (legal representatives of the original plaintiff) and Ms Smita Tondwalkar, the learned Counsel representing respondents No.5 and 6/ Corporation, and perused the material placed on record.

3. Mr Sanjiv Sawant, the learned Counsel appearing on behalf of the appellant, contends that the trial Court failed to acknowledge the absence of necessary documents produced by the original plaintiff. These documents would have demonstrated the legitimacy of the unauthorised construction and its tolerable status as per respondent No.5's policy. He further asserts that the trial Court should have taken into account the ongoing land development, for which the relevant authorities had already granted permissions. However, the refusal of the minority tenants, including respondents No.1 to 4, to vacate their premises has impeded the redevelopment process. The appellant has also initiated eviction proceedings before the Small Causes Court.

4. According to the learned Counsel, respondent No.5 has appropriately issued the notice and the speaking order, following due process of law. Additionally, Mr Sawant highlights an order dated 5 September 2023 of the Division Bench of this Court in Writ Petition (st) No.35639 of 2023, filed by respondents No.1 to 4 to contend that respondents No.1 to 4 were obstructing the redevelopment. The relevant portion is reproduced below:

“2. It is pointless to contend that the Petitioners only want parity with other tenants. If that were so, this Petition would never have had to be filed. It is only filed obviously as a mechanism to pressurise the landlord into giving the tenants preferential treatment. The attempt to draw us into an assessment of disputed questions of facts such as areas statements is equally unfortunate and cannot possibly be permitted. It is always open to the Petitioners to

execute appropriate documentation with the 4th Respondent. We will, however, not lend our discretionary and equitable powers under Article 226 of the Constitution of India to this kind of exercise only so that the Petitioners get preferential benefits.”

The learned Counsel also relied on: ***(i) Nimesh J. Patel Vs MCGM¹ and (ii) GM Heights LLP Vs MCGM and Ors²***.

5. On the other hand, Mr Pradeep Thorat, the learned Counsel appearing on behalf of respondents No.1 to 4, submits that the structure has been in existence since 1934. He contends that prior to 1960, the predecessor-in-title of respondents No.1 to 4 obtained tenancy rights for Room No.B-3 and the structure from the appellant's predecessor-in-title. Initially, separate rent receipts were issued for each premises. However, starting in 1962, these receipts were combined. The subsequent landlords, including the appellant, have consistently issued joint receipts for both premises. Mr Thorat asserts that these rent receipts and other documents provide *prima facie* proof of the structure's existence before the datum line.

6. According to the learned Counsel, respondents No.1 to 4 have consistently expressed their willingness to cooperate with the redevelopment process. However, the appellant must execute the Permanent Alternate Accommodation Agreement with these respondents at par with the other tenants, following legal norms and practices. The appellant stands accused of initiating multiple

1 2021 SCC OnLine Bom 6588

2 Writ Petition No.5302 of 2022 dated 29 March 2023 (Bombay)

legal proceedings against these respondents as a tactic to pressure them into vacating the structure. The trial Court, after a careful consideration, rightly granted relief in favour of respondents No.1 to 4. The learned Counsel supporting this argument cited several decisions, including (i) *Neon Laboratories Limited Vs Medical Technologies Limited*³; (ii) *Rajani Dattaram Tanawade and Ors Vs MCGM and Ors*⁴; (iii) *Shri Surendra Vishnu Masurkar Vs Municipal Commissioner and Anr*⁵; (iv) *Masood Ahmed Siddiqui Vs Mumbai Municipal Corporation and Ors*⁶; and (v) *Narendra Hirawat and Co. Vs Sholay Media Entertainment Pvt Ltd*⁷.

7. Ms Smita Tondwalkar, the learned Counsel appearing on behalf of respondents No.5 and 6/ Corporation, submits that during an inspection of the structure on 4 November 2016, it came to light that the owner/ occupier had built an additional room without authorisation. This unauthorised extension involved horizontally extending the existing structure using B.M. Wall and A.C. sheet roof. Subsequently, on 7 November 2016, a notice was issued under Section 351 of the MMC Act to the owner/ occupier. After receiving a response and relevant documents from the original plaintiff, the Corporation reviewed the material and issued a speaking order on 10 April 2017, directing the original plaintiff to demolish the unauthorised

3 (2016) 2 SCC 672

4 Writ Petition No.1254 of 2016 dated 23 October 2023 (Bombay)

5 Writ Petition No.231 of 2016 dated 15 November 2019 (Bombay)

6 Appeal from Order No.57 of 2013 dated 23 January 2013 (Bombay)

7 2022 SCC OnLine SC 1878

construction. Failure to comply within seven days would result in the Corporation taking action to demolish it. The learned Counsel contends that the original plaintiff failed to provide any plans or permission related to the construction. Consequently, the structure not only lacks authorisation but also violates existing policy. The trial Court's decision to grant a temporary injunction in favour of respondents No.1 to 4, thereby staying the effect of the notice and the speaking order, is erroneous due to the failure to consider these crucial aspects.

8. This Court has given anxious consideration to the rival contentions and examined the material placed on record.

9. Section 351 of the MMC Act outlines the procedure to be followed by the Commissioner when dealing with the commencement of any construction work or building erection that violates the provisions of Sections 342 or 347 of the MMC Act. Upon noticing such a violation, the Commissioner is required to issue a written notice to the person responsible for the building or work, requiring them to show sufficient cause within seven days as to why the building or work should not be removed, altered, or pulled down. Alternatively, the Commissioner can summon the person to attend an office meeting on a specified date and present their case. If the person fails to demonstrate sufficient cause, the Commissioner has the authority to take action, including the removal, alteration, or

demolition of the building or work. The explanation appended to sub-section (1) clarifies that “showing sufficient cause” means proving that the work adheres to the provisions of Sections 337 or 342 and Section 347 of the MMC Act.

10. In accordance with Section 337 of the MMC Act, every person intending to erect/ construct a building must provide notice to the Commissioner. The notice should be submitted in a prescribed form for this purpose under Section 344. The notice must specify the position of the building intended to be erected/ constructed, its description, purpose, dimensions, and the information about the person responsible for supervising its construction.

11. Section 342 of the MMC Act mandates individuals to notify the Commissioner of their intention to undertake specific actions related to a building. These actions are as follows: (a) making additions to a building or changing its existing use; (b) performing alteration or repairs to a building (except for tenantable repairs) that involve removing, altering or re-erecting any part of the building; (c) sub-dividing rooms within a building to create separate rooms or converting passages or spaces into additional rooms; and (d) removing or reconstructing portions of a building abutting a street within the regular line. The notice must be submitted in the prescribed form and should specify details such as the building’s position, the nature and extent of

the intended work, and whether any part of the work will be used for human habitation. Additionally, the person responsible for supervising the execution of the work must be named. Section 342 of the MMC Act allows for the carrying out of tenantable repairs without intimation to the Commissioner, with one notable exception. Clause (2) of sub-section (1) outlines what qualifies as tenantable repairs. However, it explicitly excludes the following actions from falling under the category of tenantable repairs: (a) altering the horizontal and vertical dimensions of the existing structure; (b) replacing or removing any structural members from load-bearing walls; (c) lowering plinth, foundations, or floors; (d) adding or extending mezzanine floor or loft; and (e) flattening or repairing the roof using different materials.

12. Section 347 of the MMC Act sets guidelines for when construction work can begin and emphasises compliance with the MMC Act's requirements. It ensures orderly development and adherence to regulations within the municipal area.

13. The definition of 'building' in Section 3(s) of the MMC Act encompasses various structures, including houses, out-houses, stables, sheds, huts, and tanks (with the exception of tanks used for storing drinking water within a building or its part). These structures can be made of materials such as masonry, bricks, wood, mud, metal, or any other material.

14. In light of the aforesaid legal position, it can be seen that in order to prevent any action under Section 351, the party receiving the notice must demonstrate sufficient cause by proving that the work in question complies with the provisions outlined in Sections 337 or 342 and 347. Furthermore, according to the Corporation's policy, a residential structure is deemed authorised if it existed prior to the datum line, specifically on or before 17 April 1964.

15. In the present case, the trial Court cited three reasons for suspending the impact of the notice issued under section 351 of the MMC Act and the speaking order. Firstly, the landlords have consistently issued rent receipts to the tenants of Room No.B-3 and the structure since 1966. Secondly, the building itself has existed since 1934. Lastly, interim protection was extended to a similarly structure, specifically Room No.C-6, in a separate suit bearing No.2375 of 2019.

16. Upon reviewing the material placed on record, it becomes evident that the documents submitted by the original plaintiff to the respondent Corporation for Room B-3 are 1965 onwards and for the structure 1973 onwards, which is after the datum line. Furthermore, the original plaintiff failed to present any authorised plans or the documents mentioned in Sections 342 and 347 to the Corporation, which would have demonstrated a valid reason for not demolishing the unauthorised extension.

Instead, these rent receipts were only produced before the trial Court, indicating payment of rent for additional space in front of Room B-3. However, the earliest rent receipt on record dates back to 5 August 1973. There is no other document to establish that the building has been in existence since 1934.

17. Given the foregoing, the impugned order is set aside. The Appeal from Order is allowed in the above terms. As a sequel, the pending application also stands disposed of.

18. At this stage, the learned Counsel for respondents No.1 to 4 states that these respondents intend to assail this Order before the Hon'ble Supreme Court and seeks suspension of this Order for a period of two weeks. Accordingly, the respondent Corporation is directed not to take any coercive action for a period of two weeks from today.

R. N. LADDHA, J.