

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

**Appeal from Order No.459 of 2023
With
Interim Application No.12705 of 2023
in
Appeal from Order No.459 of 2023**

M/s Ami Housing Ltd.,
Having its address at 102,
Manratna Business Park,
Tilak Road, Ghatkopar East,
Mumbai-400 077.

... Appellant.

Versus

1. Vijay Naval Chauhan
Aged 58 years, Occ: Business
Adult, Indian Inhabitant, son of
Late Mr Naval Bhanji Chauhan,
having Address at Room No.C-6,
Ground Floor, Madhav Kunj,
MG Road, Ghatkopar,
Mumbai-400 086.

2. Municipal Corporation of Greater
Mumbai, a Corporation incorporated
under the provisions of the Municipal
Corporation Act, 1888
Having its address at Mahapalika
Bhavan, Mahapalika Marg,
Mumbai-400 001.

3. Asst.Engineer Commissioner
'N' Ward, Municipal Officer, 5th
floor, Jawahar Road,
Ghatkopar East, Mumbai-400 077

... Respondents.

Mr Sanjiv Sawant a/w Heramb Kadam a/w Samiksha Mane
a/w Bhavana Umredkar for appellant.

Mr M.V. Holamagi for respondent No.1.

Ms Smita V. Tondwalkar for respondent No.2/corporation.

Coram : R. N. Laddha, J.

Date : 10 May 2024.

P.C. :

The appellant, in this Appeal from Order, challenges the order dated 21 July 2022, in which the trial Court restrained the Corporation from executing the notice issued on 7 November 2016, and the speaking order dated 1 March 2019, in respect of Room No.C-6, located at Madhav Kunj, Ghatkopar West, Mumbai.

2. The appellant claims to be the owner of the land. The appellant states that on 7 November 2016, the Corporation issued a notice bearing No.N/DO2N/121/351-MMCACT/N83N01/07-11-2016 under Section 351 of the Mumbai Municipal Corporation Act, 1888 ('MMC Act') to the late father of respondent No.1. The notice required him to show cause for not removing the unauthorised extension of Room No.C-6 with B.M.Wall and A.C. Sheet roof (referred to as 'the structure'). Subsequently, respondent No.1 addressed a

letter dated 2 May 2017 to the Corporation. In response, the Corporation scheduled a hearing for 25 July 2018, by a notice bearing No.ACN/004769/B&F, dated 17 July 2018. On that day, respondent No.1 presented his case at the Corporation's office. Finally, on 1 March 2019, the Corporation issued a speaking order directing the demolition.

3. Aggrieved thereby, respondent No.1 contested the notice issued on 7 November 2016 and the speaking order dated 1 March 2019 before the City Civil Court, Mumbai, in L.C. Suit No.1080 of 2019 and also filed a Notice of Motion bearing No.2375 of 2019 under Rules 1 and 2 of Order XXXIX of the Code of Civil Procedure, 1908.

4. The appellant contends that while the suit was pending, the Corporation issued a 24-hour notice on 6 June 2019, to demolish the structure. On 12 June 2019, the trial Court denied *ad-interim* relief to respondent No.1 due to the lack of documentary evidence demonstrating the legality of the structure. Despite the Corporation demolishing the structure on 28 August 2019, respondent No.1 reconstructed it without obtaining any permission. Subsequently, on 21 July 2022, the trial Court passed the impugned order restraining the Corporation from demolishing the structure. Aggrieved

thereby, the appellant has approached this Court.

5. Heard Mr Sanjiv Sawant, learned Counsel representing the appellant, Mr MV Holamagi, learned Counsel representing respondent No.1, and Ms Smita Tondwalkar, learned Counsel representing respondents No.2 and 3/ Corporation, and perused the material placed on record.

6. Mr Sanjiv Sawant, the learned Counsel appearing on behalf of the appellant, submits that no sufficient cause was demonstrated by respondent No.1 to prove the validity of the structure. The learned Counsel emphasised that the trial Court should have considered the ongoing land development, which had already received permissions from the relevant authorities. However, the refusal of the minority tenants, including respondent No.1, to vacate the premises hindered the redevelopment process. Consequently, the appellant initiated eviction proceedings before the Small Causes Court. The learned Counsel submits that the appellant has always been ready and willing to provide respondent No.1 with premises having the same area which he is legally entitled.

7. Furthermore, Mr Sawant drew the attention of this Court to the Corporation's notice dated 4 March 2022 to

contend that despite the structure's demolition, respondent No.1 has again reconstructed it without authorisation. According to Mr Sawant, the Corporation has rightly issued the notice and the speaking order, following the due process of law. To support his contentions, he relied on *(i) Estella Fernandes Nee Estella Fernandes Vs Swarna Highrise Constructions & Anr¹* and *(ii) GM Heights LLP Vs MCGM and Ors²*.

8. On the other hand, Mr MV Holamagi, the learned Counsel appearing on behalf of respondent No.1, asserts that respondent No.1 is a tenant of the appellant. The argument put forth is that the appellant has unlawfully influenced the Corporation's officials to issue notices under Section 351 of the MMC Act to respondent No.1. According to the learned Counsel, respondent No.1 has consistently expressed a willingness with the redevelopment process. However, in adherence to legal norms and practices, the appellant must execute the Permanent Alternate Accommodation Agreement with respondent No.1 at par with the other tenants. The learned Counsel invites the attention of this Court to the order passed by the Division Bench of this Court in *Ami*

¹ 2023: BHC-OS: 3980-DB

² 2023: BHC-OS: 2535-DB

Housing Ltd. vs The Commissioner, MCGM & Ors³

9. Furthermore, the learned Counsel disputes the notices issued by the Corporation regarding the structure in question. Mr Holamagi contends that the notice dated 7 November 2016, was directed at the occupier of Room No.C-3, while respondent No.1 occupies Room No.C-6. According to the learned Counsel, the structure has been in existence since 1961. He asserts that the rent receipts issued by the erstwhile landlord and other documents *prima facie* establish the legality of the structure as it existed prior to the datum line. The trial Court, after careful consideration, rightly granted relief in favour of respondent No.1.

10. Ms Smita Tondwalkar, the learned Counsel representing respondents No.2 and 3/Corporation, submits that during an inspection of the structure on 4 November 2016, it was discovered that the occupier of Room C-6 had constructed an additional room without authorisation, using B.M. Wall and A.C. sheet roofing. Subsequently, on 7 November 2016, a notice was issued under Section 351 of the MMC Act to the occupier. Respondent No.1 requested a hearing from the

³ 2023: BHC-OS: 9496-DB

Corporation on 2 May 2017, and a hearing was scheduled on 25 July 2018. On 1 March 2019, the Corporation reviewed the material and issued a speaking order, directing respondent No.1 to demolish the unauthorised construction. Failure to comply within seven days would result in the Corporation taking action to demolish the structure. The Corporation issued a 24-hour demolition notice on 6 June 2019 and demolished the structure on 28 August 2019 after the trial Court refused *ad-interim* relief.

11. Ms Tondwalkar argues that respondent No.1 failed to prove the legality of the structure due to the absence of plans, permissions, or necessary documents. The structure not only lacks authorisation, but also violates existing policy. The trial Court's decision to grant temporary injunction in favour of respondent No.1, thereby staying the effect of the notice and the speaking order, is erroneous because it failed to consider these crucial aspects.

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

13. To prevent an action under Section 351, the party receiving the notice must demonstrate sufficient cause by

establishing that the work in question fulfils the requirements of Sections 337 or 342 and 347 of the MMC Act. The recipient of such notice may produce requisite documents indicating that the structure existed before the datum line. As per 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. A profitable reference in this regard can be made to the decision of this Court in *M/s. Ami Housing Limited Vs Urmila Mahesh Chauhan & Ors*⁴.

14. In the present case, the trial Court suspended the impact of the notice issued under section 351 of the MMC Act and the subsequent speaking order. This suspension was primarily based on the grounds that the rent receipt and assessment bill for Room No.C-6 established the structure's existence prior to 1962.

15. As far as the contentions regarding the disputed notices are concerned, a careful examination of the notice bearing No. No.N/DO2N/121/351-MMCACT/ N83N01/07-11-2016 dated 7 November 2016 reveals that it was issued under Section 351 of the MMC Act for Room No.C-3. Pertinently,

⁴ 2024: BHC-AS: 21268

respondent No.1 responded to this notice. Subsequently, the Corporation scheduled a hearing on 25 July 2018. Notably, the reply from respondent No.1 was addressed to the Corporation for Room No.C-6, and the notice scheduling the hearing was also issued for Room No.C-6. On the scheduled date, respondent No.1 presented his case at the Corporation's office.

16. After reviewing the relevant documents, the Corporation, issued a speaking order on 1 March 2019, directing the demolition of the structure. This order was based on the proceedings from the hearing held on 25 July 2018, the initial notice dated 7 November 2016, respondent No.1's reply dated 2 May 2017, and another notice bearing No.ACN/004769/B&F issued on 17 July 2018. Furthermore, respondent No.1 challenged the notice dated 7 November 2016, and the speaking order dated 1 March 2019 specifically for Room No.C-6 before the City Civil Court, Mumbai. The substantial prayers in the plaint are reproduced below:

“a. For a declaration from this Hon’ble Court that the notices Notice No. N/DO2N/121/351 MMC ACT/N83/NO1/07/11/2016 AND Notice dated 01/03/2019 bearing No.ACN/1155/B&F/Gen. issued by Defendants at the Suit premises Room No.6, Chawl -C, ground floor structure, Madhav Kunj, M.G. Road, Ghatkopar (West), Mumbai – 400 086, with respect to alleged development of

temporary nature is illegal, null and void and bad in law.

b. The defendants their agents, servants, employees, officers, representatives, and assignees be restrained by an order and injunction of this Hon'ble Court from demolishing the suit premises and or in any manner disturbing the Plaintiffs possession of the suit premises Notice No.N/DO2N/121/351 MMC ACT/ N83/No.1/07/11/2016 AND Notice dated 01/03/2019 bearing No.ACN/1155/B&F/Gen. issued by the Defendants at the Suit premises Room No.6, Chawl -C, ground floor structure, Madhav Kunj, M.G. Road, Ghatkopar (West), Mumbai - 400 086"

17. Notably, no material is on record to suggest that respondent No.1 raised any objections to the issuance of notice for Room No.C-3 before the Corporation. Furthermore, no such averment has been made in the plaint. On the contrary, respondent No.1 proceeded on the footing that the notice bearing No.N/DO2N/121/351-MMCACT/N83N01 /07-11 -2016 dated 7 November 2016 under Section 351 of the MMC Act, pertained to Room No.C-6, rather than Room No.C-3. Based on this understanding, respondent No.1 replied to the Corporation, participated in the hearing scheduled on 25 July 2018, and presented his submissions related to Room No.C-6. This ultimately led to the issuance of the speaking order dated 1 March 2019 for Room No.C-6. In view of this context, this Court finds it difficult to accept

the contentions put forth by the learned Counsel for respondent No.1 regarding the discrepancies between the room numbers mentioned in the notice and subsequent speaking order.

18. Furthermore, upon examining the record, more particularly, the speaking order dated 1 March 2019, it transpires that during the hearing held on 25 July 2018, respondent No.1 relied on several documents such as ration card dated 1 March 1987, respondent No.1's election card dated 15 November 1995, and an electricity bill dated 3 April 1994 and the assessment bill. However, respondent No.1 failed to produce any approvals granted by the Corporation for the construction of the structure. Applying the provisions of Section 351 of the MMC Act, it is evident that respondent No.1 did not produce any approvals granted by the Corporation to construct the structure. Further, respondent No.1 also did not produce the necessary documents to prove that the structure existed prior to the datum line. The earliest document submitted to the Corporation was from 1987. Unfortunately, respondent No.1 did not provide the Corporation with the rent receipts. Instead, these rent receipts were directly produced before the trial Court, indicating

payment of rent for additional space in front of Room C-6. However, the earliest rent receipt on record for this additional space dates back to 14 April 1974, which is after the datum line. Regrettably, the trial Court granted interim relief to respondent No.1 only based on the rent receipt of Room No.C-6 and not the structure in question.

19. In light of the aforesaid circumstances, the impugned order is set aside. The Appeal from Order stands allowed in the above terms. As a sequel, the pending application also stands disposed of.

[R. N. Laddha, J.]