

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

**APPEAL FROM ORDER NO. 22 OF 2024
WITH
INTERIM APPLICATION NO.320 OF 2024
IN
APPEAL FROM ORDER NO. 22 OF 2024**

Kitabullah Khan

.. Appellant

v/s.

The Mumbai Municipal
Corporation Of Greater
Mumbai

.. Respondent

Mr. S.C. Naidu a/w. Ms.Megha P. Shigavan a/w.
Ms.Kajal Chaurasia a/w. Divya Pradeepkumar Yajurvedi
for the Appellant.

Mr. Dharmesh Vyas a/w.Ms. Seema Rawade for the Respondent/MCGM.

Mr. Narendra Walawalkar Senior Counsel for the BMC.

Mr. Gajanan Dhotre, D.O.T. (Officer) of MCGM present.

Mr. Sujit Bhojane AEBFT (i/c) (Officer) of MCGM present.

CORAM : SHYAM C. CHANDAK, J.

DATE : 9th OCTOBER, 2024.

P.C. :

. Heard learned counsel for the parties.

2) Rule. Rule made returnable forthwith and heard finally with consent of parties.

3) The aforesaid Appeal is heard at length. During hearing, learned counsel for the Appellant pointed out the Judgment and Order in earlier L.C.Suit No. 2074 of 2018, wherein the Appellant had impugned a notice under Section 351 of the Mumbai Municipal Corporation Act, 1881 ('the Act' for short). In the said Judgment and Order the trial Court held

that the subject matter structure is comprised of two parts one admeasuring 500 sq.ft. and the another admeasuring 707.18 sq.ft. Learned counsel for the Appellant submitted that the 500 sq.ft. structure referred above and the 500/550 sq. ft. structure mentioned in the notice under Section 351 of the MMC Act, which is subject matter in this Appeal, are the same. In turn, learned counsel for the Respondent, on instructions, submitted that when the plaintiff replied the subject notice, he did not enclose the said Judgment and Order of the earlier suit. However, the learned counsel for Respondent, on instructions stated that, the Respondent may be permitted to inquire into the matter again and pass a fresh Speaking Order in the light of the earlier Judgment and Order. Learned counsel for the Appellant/Plaintiff has no objection for that. In view thereof, the learned counsel for the parties submitted that the impugned Order may be set aside w2/12/2024ith a direction to the plaintiff to file additional reply to his previous reply dated 8th February 2018, submitting copy of the said Judgment and Order, restore the inquiry to the stage of hearing and after hearing the parties, to pass a fresh Speaking Order, on merit. Said statement is accepted. The Appeal deserves to be disposed of, accordingly. Hence, following Order:

- i) The impugned Order dated 13th December 2023 passed in Notice of Motion No.1998 of 2018 in LC Suit No.2074 of 2018 by the Ad-hoc Judge, City Civil Court is quashed and set aside. The said Notice of Motion stands filed and disposed of, as per the

statements made for and on behalf of the parties, as noted above.

The impugned Speaking Order dated 27th April 2018, stands quashed and set aside.

ii) The inquiry in the “Subject : T/108/30-01-2018/24” and “T/DO2T-108/351-MMC ACT/T24NO1/31-01-2018”, stands restored to the file of the Officer concerned of the Respondent, for further inquiry.

iii) The Appellant shall file his additional reply to the subject notice, enclosing the Judgment and Order dated 20th February 2014, in L.C.Suit No.759 of 2011.

iv) Said reply shall be filed within two weeks from the date of uploading this Order

v) If said reply is filed, then Respondent shall inquire and examine the subject matter again and pass fresh Speaking Order, on merit. The inquiry shall be completed within 4 weeks after filing of the reply.

vi) No coercive action shall be taken against the Notice structure till completion of the inquiry, *vide* Notice No.: T/DO2T/108/351-MMC ACT/T24NO1/31-01-2018

vii) In case any adverse Speaking Order is passed, the defendant shall not take any coercive action against the Notice structure for a period of two weeks from the date of service of the Speaking Order.

This is to facilitate the Appellant to file fresh Notice of Motion after carrying out necessary amendment in the suit.

viii) The Speaking Order shall be served to the Appellant within one week from the date of passing of that Order and the acknowledgment of receipt of the same shall be taken on record.

ix) The Appeal stands disposed of in aforesaid terms. Rule is made absolute.

4) Interim Application No. 320 of 2024 stands disposed of, accordingly.

(SHYAM C. CHANDAK, J.)

JYOTI
RAJESH
MANE

Digitally signed
by JYOTI RAJESH
MANE
Date: 2024.12.04
11:18:37 +0530