

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 583 OF 2024
WITH
INTERIM APPLICATION NO. 11443 OF 2024

Mr. Sunil Balram Gupta

...Appellant

Versus

Brihanmumbai Municipal Corporation And
Another

...Respondents

Mr. Yashodeep Deshmukh a/w Gurubala Birajdar, Khushwant Kaur i/b
Amol Kamble for the Appellant.

Ms. Seena Rawade for Respondent/BMC.

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CORAM : M.M. SATHAYE, J.
DATE : 19th DECEMBER 2024

P.C. :

1. Heard learned counsel for the parties.
2. The appeal is filed challenging refusal of ad-interim relief under order dated 06.07.2024 passed by City Civil Court, Greater Mumbai in Draft Notice of Motion in L.C. Suit No. 5382 of 2024. The motion was filed for restraining Respondent/Municipal Corporation from taking action pursuant to suit notice dated 04.04.2024 and speaking order dated 14.06.2024.
3. Learned Counsel for the Appellant submits that recently a notice under Section 488 of the Mumbai Municipal Corporation Act, 1888 ('the said Act' for short) has been issued on 13.12.2024 and therefore, the Appeal is urgently moved. Admittedly, motion is pending and parties are at ad-interim stage.

4. Apparently, the suit notice is issued under Section 351 of the said Act, mentioning the offending structure as standing on 'CTS No. 648', Village Borla, Anwar Compound, W.T. Patil Marg, Chembur. Mumbai-400071. Even the recent notice under Section 488 of the said Act, placed on record, mentions the impending action on the structure situated on CTS 648.

5. The Appellant claims to be sub-lessee from one Mr. Amar Singh Chauhan s/o Ram Singh Chouhan under Sub-Lease Deed dated 24.06.2016. The suit is filed asserting that suit structure is standing on 'CTS No. 427' at Anwar compound, W.T. Patil Marg, Moti Baug, Ghatla Village, Chembur, Mumbai – 400071. So far as reliance placed on survey map produced along with suit is concerned, the same was not produced at the time of reply and therefore, it is not considered in the speaking order.

6. Learned Trial Judge has also noted in impugned order paragraph 2 about this inconsistency in CTS numbers. In such circumstances, no fault can be found with the impugned order and therefore, **this matter is disposed of** by passing following order.

(i) The impugned order is not interfered with. However, it is clarified that the Respondent/Municipal Corporation will not be able to take any action in respect of the Appellant's structure standing on CTS No. 427, pursuant to suit notice dated 04.04.2024 and speaking order dated 14.06.2024.

(ii) Needless to mention that Respondent/ Corporation is at liberty to proceed with the suit notice dated 04.04.2024 and speaking order dated 14.06.2024 in respect of structure situated on CTS No. 648.

7. Appeal from Order and Interim Application are disposed of in above terms.

8. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)