

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 747 OF 2024
WITH
INTERIM APPLICATION NO. 14135 OF 2024

Ethashamuddin Shaikh

...Appellant

Versus

The Municipal Corporation Of Greater Mumbai
And Anr

...Respondents

SNEHA
NITIN
CHAVAN

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Mr. Ashok Pande a/w Shobhit Shukla for the Appellant.

Ms. Seena Rawade for Respondent/Corporation.

CORAM : M.M. SATHAYE, J.

DATE : 9th DECEMBER 2024

P.C. :

1. Heard learned counsel for the parties.
2. This appeal challenges order dated 12.08.2024 passed in Notice of Motion No. 3243 of 2024 in L.C. Suit No. 5446 of 2024. By the impugned order, the motion taken out by the Appellant is dismissed thereby refusing to restrain the Respondent Municipal Corporation from acting upon the suit notice dated 30.04.2024 and speaking order dated 14.06.2024.
3. Perusal of the impugned notice dated 30.04.2024 shows that the suit structure, as it exists on the date of notice, is ground plus one with Brick Masonry Walls, M.S. Angle frame work and ladi coba slab having G.I. Sheet roof on top.

4. After the suit notice was issued, the Appellant submitted document along with reply from Advocate dated 27.05.2024. The said reply indicates that the document of repair permission granted by Respondent/Corporation dated 30.07.1991 was relied upon. Perusal of Speaking Order dated 14.06.2024 passed by the Designated Officer of Respondent/Corporation shows that this reply was considered and it was found that there was no satisfactory evidence to prove that the suit structure is authorized.

5. However, for satisfaction of the Court, the document relied upon by the Appellant was perused by this Court. Perusal of the repair permission dated 30.07.1991, which is produced by the Appellant at page 228 of the Appeal compilation, shows that no objection was given by Respondent/Corporation in 1991 to carry out repairs to the existing shop and office with Mezzanine floor. This repair permission does not indicate how and in what manner the repairs were permitted, nor does it indicate the extent of suit structure as it existed in 1991 i.e. 33 years ago, so that it can be compared to its present form and extent. In that view of the matter, the repair permission dated 30.07.1991 does not support the case of the Appellant.

6. Viewed in the light of what is stated aforesaid, if the impugned order is perused, it is seen that the Trial Judge has considered assessment bill which shows that the structure AC Shed and godown is assessed on 01.04.1994, which is not sufficient to prove existence of structure prior to 1962. Learned Trial Judge has further considered the repair permission of 30.07.1991 which is also considered by this Court. It is rightly observed that this repair permission is after the datum line of 1962 and there is no description of structure. Merely

because Respondent/ Corporation had granted repair permission, the structure as it stands today does not become authorized.

7. In that view of the matter, the impugned order is an order passed on material available before the Court. There is neither perversity nor any error apparent on the face of record. Therefore no interference is necessary.

8. The Appeal and pending interim application/s are accordingly dismissed. No costs.

9. It is clarified that in case the Appellant has any other document which is not shown to the Trial Court when impugned order was passed, he is at liberty to file appropriate proceedings, as permissible under law.

(M.M. SATHAYE, J.)