

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 814 OF 2024
WITH
INTERIM APPLICATION NO. 14792 OF 2024

Shivanand Dejappa Shetty

...Appellant/
Applicant

Versus

The Municipal Corporation Of Greater And Anr

...Respondents

Mr. Joel Carlos for the Appellant.

Mr. Om Suryawanshi a/w Amol Diwate i/b Ms. Komal Punjabi for
Respondent/MCGM.

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

P.C. :

1. Heard learned counsel for the Appellant and learned counsel for the Respondent/Corporation. Perused the record.

2. This appeal is directed against rejection of ad-interim relief under order dated 22.10.2024 passed by the City Civil Court, Greater Mumbai in Draft Notice of Motion in L.C. Suit No. 6418 of 2024. The Trial Court, by order of the same date as impugned Order (22.10.2024) had directed the Respondent/ Corporation not to take coercive action for a period of four weeks. It is therefore, clear that the Appellant is protected till today.

3. Learned counsel for the Appellant has invited this Court's attention to the impugned notice dated 31.07.2024 which indicates that

alleged unauthorised construction is WC, wash basin, mezzanine floor and placement of water tank on commercial unit on the ground floor. It can be seen from the impugned notice itself that commercial unit measurement and measurement of placement of water tank are same.

4. Learned counsel for the Appellant also invited this Court's attention to shop and establishment licence dated 09.08.1958 indicating commencement of business on 01.08.1958 and the name of N.G. Hegde. It is contended that N.G. Hegde is grandfather of the Appellant. Learned counsel for the Appellant also invited this Court's attention to the letter dated 24.05.1960 written by Mr. N.C. Hegde. It is apparently received by the then Assistant Engineer, Building Department of the Respondent/Corporation on 24.05.1960. It is stated in this latter that planks of mezzanine floor had decayed and needs to be replaced and therefore, repair permission was sought.

5. The Appellant has brought on record of the above Interim Application, the reply/permission dated 20.06.1960 given to Mr. Hegde for repairs of existing hotel issued by the Assistant Engineer in response to the said letter of 24.05.1960. Also a plan apparently signed by Assistant Engineer 'F' Division of Respondent/Municipal Corporation dated 28.06.1960 is also produced by the Appellant in above interim application.

6. It is common ground before the Court that both these documents now produced, were not before the Trial Court when the impugned order was passed.

7. Perusal of the impugned order shows that the letter written

by Mr. Hegde in May 1960 is referred but it is observed that no document is placed on record to show whether such repairs were done upon obtaining permission.

8. In the aforesaid facts and circumstances, no purpose will be served by appreciating new documents, first time in this Court, since the Municipal Corporation also will have to answer to those documents and rival submissions will have to be considered.

9. The Appellant has also relied upon the Assessment extract. It is asserted by the Appellant and denied by the Respondent/Municipal Corporation that the assessment relates to the subject matter alleged unauthorised structure.

10. In view of the aforesaid facts and circumstances, in my view the Notice of Motion will have to be heard in the light of the new material produced on record.

11. Hence, the following order.

- (i) The Appeal from Order is allowed.
- (ii) The impugned order dated 22.10.2024 is set aside. The Trial Court is directed to consider the Notice of Motion on its own merits and in the light of the additional documents produced with this Appeal from Order / Interim Application as indicated above, in accordance with law, without being influenced by observations in this order. Rival contentions of the parties are kept open.
- (iii) During pendency of the motion, the protection granted under order dated 22.10.2024 shall continue.

(iv) Interim Application is also disposed of in above terms.

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

(M.M. SATHAYE, J.)