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

**INTERIM APPLICATION NO.566 OF 2024
IN
FIRST APPEAL NO.62 OF 2024**

Shivkumar Prem Nanda ..Applicant/Appellant
Versus
The Municipal Corporation of Greater
Mumbai & Anr. ..Respondents

**WITH
INTERIM APPLICATION NO.571 OF 2024
IN
FIRST APPEAL NO.64 OF 2024**

Ramchandra S/o Narayan Gavali
Since deceased through legal heirs
Seeta Ramchandra Gavali & Ors. ..Applicants/Appellants
Versus
The Municipal Corporation of Greater
Mumbai & Anr. ..Respondents

Mr. Anukul Seth, for the Applicants/Appellants.
Mr. Santosh Parad, for the Respondent No.1/MCGM.
Mr. Kishor V. Tembe a/w Madhavi S. Nalawade, for the Respondent
No.2.

CORAM : KISHORE C. SANT, J.

DATE : 28th FEBRUARY, 2024

PC.

1. These Applications are filed seeking stay to the judgment
and order passed by the learned City Civil Judge in LC Suit

Nos.1685/2013 1686/2013, where the suit is dismissed with costs and praying for relief of stay to the effect, execution and operation of notice dated 26.02.2013 issued under Section 351 of the MMC Act along with order dated 26.03.2013 passed thereunder.

2. It is the case of the Applicant in short that the Municipal Corporation issued notice under Section 351 of the MMC Act for demolition of the structure on CTS No.180 addressed to the Applicant. The Applicant therefore filed a suit in the City Civil Court seeking various reliefs including declaration that the impugned notice is illegal and for setting aside the same. However, the said suit came to be dismissed by the Trial Court specifically holding that the Plaintiff has failed to prove that the suit structure is authorized and the same is in existence prior to the datum line i.e. year 1964. It is further held that the Plaintiff also failed to prove that the suit structure is situated in slum area and is protected under the Slum Act. In view of the findings, it is further held that the Plaintiff failed to prove the notice and the order under challenge are illegal, bad in law and null and void.

3. The notice was issued in respect of the construction of structure with the help of B/M wall and A/C sheet admeasuring 23 X 14 ft. and 22.6 X 10.7 ft. While considering the suit, learned Trial Court held that the documents produced and relied upon by the Applicant in the Trial Court are in respect of the different structure than the structure for which notice is issued.

4. On this background, learned advocate for the Applicant vehemently argued by taking this Court to some documents. Firstly, he submits that there is interim relief granted by this Court on 01.11.2016 pending the trial. The same is continued till today. He thus prayed to continue the same. So far as the documents are concerned, he relies upon tax assessment of Building Section of the Corporation, wherein it is shown that the structure on CTS No.180 was assessed for the first time on 31.03.1961. By relying on Circular dated 20.03.2017, he submits that the structures which are standing prior to 1964 in case of residential structure and prior to year 1961 in case of business structure are protected. In this case, since there is assessment done in the year 1961, it shows that the structure is standing even prior to that. He has also taken to the cross-examination of the Officer of BMC, wherein the officer had admitted that the structures which were in existence prior to 1962-64 are shown in black ink in city survey. To support his contention that the present suit structure is also shown in black ink, he has further relied upon the bill, challan certifying payment of charges for CTS No.180 addressed to the Applicant. He submits that the observation of the Judge in paragraph 21 of the judgment is not correct in view of these documents. He thus submits that the suit structure comes under tolerated structure.

5. Learned advocate for Respondent No.2, Mr. Kishor Tembe vehemently opposes the Application saying that it is only such structure which is authorized to be tolerated. Plaintiff could

not produce anything to establish the suit structure is in existence prior to 1964. So far as bill is concerned, he submits that the bill was sent in respect of another property on CTS No.180. The owner shown is Bhaton Paints Compound. The structure shown is Corrugated Iron Sheet as factory. He further submits that the assessment collection department again made inspection in the year 1992-93 showing the date of assessment prior to 1961-62. From the particulars of the property, he submits that again it is shown as Corrugated Iron Sheet as factory. Owner is shown as Bhaton Paints Compound. In the present case, the subject matter is A/C sheet, where occupant shown to be Shri. Shiv Prem Nanda. Looking to the suit description, he submits that it is a single room in compound. The documents which are sought to be relied upon by the Plaintiff are not about the suit structure. CTS was first implemented in 1964. Thus at the most, the structure can be said to be noticed in 1964. In such cases, it is for the Plaintiff to specifically show that his structure stands since prior to 1961. The Plaintiff himself in the cross-examination admitted that he does not have documents prior to 1964 to show existence of the structure.

6. Learned advocate for Respondent No.1, Mr. Santosh Parad submits that in the survey the structure was found to be of Corrugated Iron Sheet. The notice dated 26.02.2013 is in respect of A/C sheet constructed with B/M wall. Thus, the structure is different than the structure shown to be existed prior to 1964. The Trial Court has rightly observed that the suit structure is not proved

to be prior to 1964 and has rightly dismissed the suit.

7. This Court finds that the Trial Court has recorded specific finding that the suit structure is different than the structure which is shown to be in existence since 1960.

8. Applicant has failed to show that the suit structure was in existence prior to datum line. This Court *prima-facie* finds that no case is made out to grant interim relief granting stay to the suit structure.

9. Both these Applications are therefore dismissed.

[KISHORE C. SANT, J.]