

Iresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 178 OF 2024
WITH
INTERIM APPLICATION NO. 1974 OF 2024
IN
APPEAL FROM ORDER NO. 178 OF 2024**

Maya Hemachandra MenonAppellant

Vs.

Municipal Corporation of Greater MumbaiRespondent
H/E Ward Office

**WITH
INTERIM APPLICATION NO. 6315 OF 2024
IN
APPEAL FROM ORDER NO. 178 OF 2024**

Jaavi Infra Private LimitedApplicant

IN THE MATTER BETWEEN

Maya Hemachandra MenonAppellant

Vs.

Municipal Corporation of Greater MumbaiRespondent
H/E Ward Office

**WITH
APPEAL FROM ORDER NO. 185 OF 2024
WITH
INTERIM APPLICATION NO. 1993 OF 2024
IN
APPEAL FROM ORDER NO. 185 OF 2024**

Puthenveetil Dayanand NairAppellant

Vs.

Municipal Corporation of Greater MumbaiRespondent
H/E Ward Office

**WITH
INTERIM APPLICATION NO. 6316 OF 2024
IN
APPEAL FROM ORDER NO. 185 OF 2024**

Jaavi Infra Private LimitedApplicant

IN THE MATTER BETWEEN

Puthenveetil Dayanand NairAppellant

Vs.

Municipal Corporation of Greater MumbaiRespondent
H/E Ward Office

**WITH
APPEAL FROM ORDER NO. 183 OF 2024
WITH
INTERIM APPLICATION NO. 1986 OF 2024
IN
APPEAL FROM ORDER NO. 183 OF 2024**

Chandu Kanji GadaAppellant

Vs.

Municipal Corporation of Greater MumbaiRespondent
H/E Ward Office

**WITH
INTERIM APPLICATION NO. 6314 OF 2024**

**IN
APPEAL FROM ORDER NO. 183 OF 2024**

Jaavi Infra Private LimitedApplicant

IN THE MATTER BETWEEN

Chandu Kanji GadaAppellant

Vs.

Municipal Corporation of Greater MumbaiRespondent
H/E Ward Office

**WITH
APPEAL FROM ORDER NO. 184 OF 2024
WITH
INTERIM APPLICATION NO. 1990 OF 2024
IN
APPEAL FROM ORDER NO. 184 OF 2024**

Ratnaben Kanji GadaAppellant

Vs.

Municipal Corporation of Greater MumbaiRespondent
H/E Ward Office

**WITH
INTERIM APPLICATION NO. 6317 OF 2024
IN
APPEAL FROM ORDER NO. 184 OF 2024**

Jaavi Infra Private LimitedApplicant

IN THE MATTER BETWEEN

Ratnaben Kanji Gada

....Appellant

Vs.

Municipal Corporation of Greater Mumbai
H/E Ward Office

.....Respondent

Mr. Drupad Patil a/w Ms. Aishwarya Shinde and Ms. Ketki Gadkari for the appellants

Mr. Vaibhav Gharalwar a/w Rutuparn Deo i/b Mr. Aditya Lele for the applicant

Mr. Dharmesh Vyas a/w Mr. Om Suryavanshi for BMC

Ms. Sheela Nair representative of Puthenveetil Nair present in Court

Ms. Urmila Gada representative of Ratnaben Gada present in Court

Mr. Murli Menon representative of Maya Menon present in Court

CORAM : GAURI GODSE, J.

DATE : 22nd JANUARY 2025

ORDER:

1. These appeals are heard for final disposal by consent of the parties. These appeals arise out of rejection of ad-interim relief in the pending suits. The suits are filed by these appellants challenging the notice issued by the Corporation under Section 351 of The Mumbai Municipal Corporation Act ('the said Act'). Allegation in the notice is regarding unauthorised extension to the existing structure and erection of mezzanine floor.

2. Application for grant of ad-interim relief is refused by the City

Civil Court on the ground that the plaintiffs were unable to show any document to even prima facie indicate that there was mezzanine floor in existence, and that the extension on the ground floor is part of the original structure.

3. During the course of arguments, learned counsel for the appellants relied upon the application for supply of water for building nos. 8 and 9. This application forms part of the documents produced by the Corporation before the City Civil Court.

4. Learned counsel for the appellants points out point no. 6 of the application, which according to the learned counsel for the appellants refers to sanctioned plan dated 22nd January 1953. The copy of the application is at page 34 of Appeal from Order No. 178 of 2024. Learned counsel for the appellants further submits that in the reply filed by the appellants to the notice under Section 351, the appellants had requested the Corporation to supply documents based on which the notice was issued. He submits that one of the appellants had also filed an application under The Right to Information Act 2005 requesting to supply documents. Learned counsel for the appellants submits that if the sanctioned plan referred to in the application at page no. 34 is

perused and it is found that the mezzanine floor or an attic floor was in existence, same would support the appellants' contention that there is no illegal construction of a mezzanine floor as alleged in notice under Section 351.

5. Learned counsel for the Corporation on instructions submits that there are only two plans in existence i.e. one of the year 1956 and another of 1974. He submits that those copies are already placed on record in the suit. He, however, submits that the Corporation shall file an affidavit of a responsible officer to explain the reference to the plan dated 22nd January 1957 relied upon by the learned counsel for the appellants. Learned counsel for the Corporation submits that subsequent plan of 1974 which is on record does not refer to any mezzanine floor. He, however, submits that a responsible officer of the Corporation shall take inspection and file necessary affidavit. He submits that the responsible officer of the concerned department shall take inspection of the record and file an affidavit before this Court indicating whether there is any such plan on record. He submits that if there is any such plan dated 22nd January 1953 in the record of Corporation, the copy of the same shall be filed alongwith the affidavit. Learned counsel for the Corporation submits that necessary affidavit

shall be filed within one week from today.

6. Learned counsel for the appellants on instructions submits that in the event there is no such plan in existence as referred to in the application at page 34, the appellants shall remove the mezzanine floor as referred to in the notice under Section 351. Learned counsel for the appellants on instructions submits that undertaking as referred to above shall be filed by the respective appellants within one week.

7. So far as the extension on the ground floor is concerned, learned counsel for the appellants is unable to point out any fault in the observations by the Corporation in the speaking order dated 14th September 2023. The speaking order indicates that the structure which is the subject matter of the notice is admeasuring 344 square feet carpet area without the veranda as per the documents and plans on record. In the absence of any document in the form of any assessment or any pleading with regard to area on the ground floor being over and above 344 square feet, prima facie observations of the City Civil Court on the ground floor being an unauthorised extension cannot be faulted. Hence, I do not see any reason to extend the interim protection so far as ground floor extension referred to in

speaking order dated 14th September 2023 and the impugned notice under Section 351 of the said Act.

8. However, learned counsel for the appellants submits that on the next date, he will point out the relevant documents to support their contention that the alleged extension in the notice under Section 351 is in existence since beginning and there is no unauthorised extension. Accordingly, appropriate directions will be passed after the affidavit of the Corporation is placed on record.

9. List the appeals for further directions and orders on 7th February 2025. To be listed as part heard.

10. To be listed high on board in the caption of 'Admission'.

11. Ad-interim relief already granted to continue till the next date.

[GAURI GODSE, J.]