

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

**APPEAL FROM ORDER NO.77 OF 2025
WITH
INTERIM APPLICATION NO.1447 OF 2025
IN
APPEAL FROM ORDER NO.77 OF 2025**

Mrs. Milina Lunavat

...Appellant

V/s.

Municipal Corporation of Gr.
Mumbai and Anr.

...Respondents

Mr. Amogh Singh with Mr. Sagar Kasar, Mr. Amol Wagh, Mr. Rishabh Tiwari and Mr. Vivekanand Krishnan i/b. Ms. Chaitali Bhogale for the Appellant.

Mr. Vaibhav R. Gaikwad with Mr. Om Suryawanshi for Respondent - BMC.

Mr. Amol Anand Thorat, SE(B &F) 'S' Ward present.

CORAM : SANDEEP V. MARNE, J.

Dated : 14 February 2025.

P.C. :

1) The Appeal challenges order dated 28 January 2025 passed by the Ad-hoc Judge, City Civil Court, Mumbai, rejecting ad-interim stay to the notice dated 22 October 2024 and speaking order dated 23 December 2024.

2) I have heard Mr. Singh, the learned counsel appearing for the Appellant and Mr. Vaibhav Gaikwad, the learned counsel appearing for the Respondent -Municipal Corporation.

3) Notice dated 22 October 2024 is issued under the provisions of Section 351 (1A) of the Mumbai Municipal Corporation Act, 1888. The same is in respect of following unauthorised construction:-

Unauthorised construction of, 1) Brick Masonry wall adm. (7m length x 1.1m height x thickness of 0.1 m) 2) unauthorised installation of M.S. Gate adm. (4.4m length x 1.6m height)

4) Appellant has filed his reply dated 28 October 2024 on which speaking order has been passed by the Municipal Corporation on 23 December 2024 holding that the Appellant was not able to produce sanctioned authorised plan indicating presence of brick masonry wall or M.S. Gate therein.

5) Perusal of the Plaint would indicate that there is complete absence of pleading to the effect that construction of brick masonry wall was sanctioned by the Planning Authority in the approved plans. Plaintiff/Appellant sought to raise only the point of non-indication of M.S. Gates in any of the portions of the Society's premises in paragraph 8.9 of the Plaint, which reads thus:-

8.9. The Plaintiff states that the sanctioned layout plan obtained from RTI by the concerned Police station has been filed in the additional affidavit filed before Hon'ble High Court, Bombay in the said suit which clearly shows the adjoining open space as part of this bungalow owned by the Plaintiff. The Plaintiff would like to state that the plan does not show any of the gates in existence in the Society including the (i) Main Entrance M.S. Gate to Society (ii) Side Entrance M.S. Gate near Eden Club. It also does not show any of the additional structures in the Society such as (i)

Security Guards Cabin (ii) Society Manager's Office. However, these are also presently existing in the Society premises. The M.S. Gate is also of the same design as the other gates and grills in the society, and has been in existence as provided by the builder since 1989 and has been stated and acknowledged by the Society. The Plaintiff states that the same matter is subjudice before Hon'ble City Civil Court and is pending for hearing. Hereto marked and annexed Exhibit-'Q' colly are the copies of Sanction Plan and Photograph of gate near Eden Club of same design.

6) Though *prima facie* I am in agreement with contention of Mr. Singh that sanctioned plan may not always indicate M.S. gates in any part of the building, this would only explain second part of unauthorised structure viz., unauthorised installation of M.S. gate admeasuring 4.4m length x 1.6m height. So far as the first structure of 'brick masonry wall admeasuring 7m length x 1.1m height x thickness of 0.1 m' is concerned, there is no pleading in the Plaint that the same forms part of the sanctioned plan.

7) Mr. Gaikwad, the learned counsel appearing for Municipal Corporation is apposite in relying on observations made by the Division Bench of this Court in ***Tushar Guru Salien V/s. State of Maharashtra and Others***¹ in which it is observed in paragraphs 4 and 5 as under:-

4] Since the learned Judge who has granted the ad-interim protective order has yet to decide the application seeking interim injunction, for the benefit of the learned Judge and for the benefit of all Judges in the State of Maharashtra before whom such kinds of suits are instituted, we would like to clarify the legal position.

5] Concerned a property, a suit to enforce or protect an interest in the property which is governed by a Municipal

¹ Public Interest Litigation No.67 of 2017, decided on 28 August 2019

Statute, the interest protected has to be with respect to a plea that prima-facie, the structure which is being targeted is an authorized structure. Meaning thereby, the plaint must made an averment of the sanction obtained from the Corporation and must make an averment that the structure targeted is prima-facie governed by the sanction. Merely pointing out deficiencies in the notice or the authority of the person issuing the notice is neither here nor there. Thus, the *sine qua non* of such kinds of suits is a positive assertion made with reference to the sanctioned building plans.

8) Thus, for successful defending an action before the Civil Court challenging notice issued by the Planning Authority alleging unauthorised construction it must be pleaded in the Plaint that the construction in respect of which notice is issued is unauthorised and sanctioned in the development permission. In the present case, there is no whisper in the entire Plaint as to whether construction of brick masonry wall is sanctioned in the development permission. Though Mr. Singh has attempted to draw my attention to the sanctioned plan, I am afraid the same cannot be looked into, in absence of fundamental pleading in the Plaint. Even otherwise perusal of the sanctioned plan does not conclusively show that construction of brick masonry wall was approved therein.

9) I do not find for any serious flaw in the view taken by the learned Ad-hoc Judge, City Civil Court holding that there are no pleadings about the legality of the structure or about sanctioned plan on the part of the Plaintiff. I am therefore of the view that no case is made out for grant of any ad-interim order in favour of Appellant/ Plaintiff. The City Civil Court has rightly rejected Application for ad-interim order. No interference is warranted in

the order passed by the City Civil Court on 28 January 2025.
the Appeal is accordingly **dismissed**.

10) After the order is pronounced, Mr. Singh would fairly bring to my attention affidavit-cum-undertaking of the Appellant by which she has undertaken to voluntarily remove the offending structures covered by the Notice dated 22 October 2024 within a period of two weeks of her return from London. She has stated in the affidavit that she is slated to return from London on 22 March 2025.

11) The undertaking filed by the Appellant is taken on record and marked 'X' for identification. In view of the undertaking submitted to this Court about voluntary removal of the offending structure within a period of two weeks of return of the Appellant from London, the Municipal Corporation shall not take any action on the basis of the impugned notice till 5 April 2025.

12) In view of dismissal of the Appeal, nothing survives in the interim Application and the same stands disposed of.

[SANDEEP V. MARNE, J.]